The Sydney Morning Herald.

"IN MODERATION PLACING ALL MY GLORY, WHILE TORIES CALL ME WHIG—AND WHIGS A TORY."

TERMS OF SUBSCRIPTION.
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SALES BY AUCTION.

SHIPPING INTELLIGENCE.

ARRIVALS—None.

DEPARTURES—None.

COASTERS INWARDS.

January 4.—*Adventure*, 22, Law, from Broulee, with 4 tons bark; *William*, 14, Beazley, from Port Aiken, with 300 bushels shells; *Mary Jane*, 32, Somerville, from Newcastle, with 42 tons coals; *Rose*, steamer, 172, Pattison, from Morpeth, with 98 bales wool, 19 casks tallow, 3 tons onions, 310 bushels wheat.

January 6.—*Trial*, 12, M'Keon, from Brisbane Water, with 1000 feet timber, 40,000 shingles; *James and Amelia*, 35, Doyle, from Newcastle, with 38 tons coals; *Lucy Ann*, 37, Sheridan, from Newcastle, with 40 tons coals; *Gleaner*, 14, Green, from Brisbane Water, with 10 tons forest oak; *Georgiana*, 25, Thompson, from Wollongong, with 300 bags potatoes; *Lark*, 20, Ford, from Wollongong, with 9 tons potatoes, 2 bales hair; *Eclipse*, 24, Brookes, for the Paterson, with 400 bushels wheat, 400 bushels maize, 100 bushels barley; *Sophia Jane*, steamer, 156, Stericker, from Morpeth, with 53 bales wool, 50 hides, 13 kegs tobacco, 15 trusses hay, &c.

January 7.—*Dolphin*, 16, Nicholson, from Wollongong, with 5000 feet cedar; *Challenger*, 31, M'Fayden, from the Manning, with 10,000 feet cedar, 3000 feet hardwood, 6 bales wool, &c.; *Endeavour*, 10, Milham, from Brisbane Water, with 260 bushels shells; *Louisa*, 15, Settree, from Brisbane Water, with 3000 feet timber, 25,000 shingles; *Rainbow*, 18, Cox, from Brisbane Water, with 8000 feet timber, 31,000 shingles; *Phœbe*, 89, Bennett, from the Richmond, with 38,000 feet cedar, 2000 feet pine logs, 3000 feet deck planks.

January 9.—*Mary Jane*, 32, Somerville, from Newcastle, with 45 tons coals; *Sophia Jane*, steamer, 156, Stericker, from Morpeth, with 5 casks tallow, 24 bales wool, 21 bags corn, 51 bags wheat, 35 trusses hay, 20 bags barley, &c.; *Tamar*, steamer, 130, Allen, from Morpeth, with 60 bales wool, 300 bushels wheat, 40 hides, 20 trusses hay, 10 casks beef, 24 bags potatoes; *Rosalind*, 12, Brags, from the Hunter, with 500 bushels wheat.

COASTERS OUTWARDS.

January 4.—*Rose*, steamer, 172, Pattison, for Morpeth, with sundries; *Acme*, 19, Robinson, for Kiama, in ballast; *Mary Jane*, 32, Somerville, for Newcastle, in ballast; *William*, 14, Beazley, for Broken Bay, in ballast; *Ariel*, 72, Collins, for Newcastle, in ballast; *Mary*, 4, Hawke, for the Hawkesbury, in ballast; *Bee*, 12, Sugden, for Kiama, with sundries; *Highland Lass*, 20, Halcrow, for Shoalhaven, with sundries; *Sarah*, 49, Potter, for Lake Macquarie, with sundries.

January 6.—*Roubulla*, 16, Stewart, for Kiama, with sundries; *Bard's Legacy*, 21, M'Neil, for Wollongong, with sundries; *Mary Ann*, 9, Black, for Pittwater, with sundries; *Jane and Amelia*, 35, Doyle, for Newcastle, in ballast; *Lucy Ann*, 37, Sheridan, for Newcastle, in ballast; *Gleaner*, 14, Greer, for Brisbane Water, in ballast; *Tamar*, steamer, 130, Allen, for Morpeth, with sundries; *Sophia Jane*, Stericker, for Morpeth, with sundries.

January 7.—*Union*, 32, Thom, for Shoalhaven, with sundries; *William*, 21, Bloxham, for Newcastle, in ballast; *Rainbow*, 18, Cox, for Brisbane Water, with sundries; *Louisa*, 15, Settree, for Brisbane Water, in ballast; *Endeavour*, 19, Milham, for Brisbane Water, in ballast; *Sisters*, 46, Korff, for Newcastle, in ballast.

January 9.—*Mary Jane*, 32, Somerville, for Newcastle, in ballast; *Alexander*, 10, Ranson, for Wollongong and Kiama, with sundries; *Harriett*, 15, Crause, for Brisbane Water, with sundries; *Sophia Jane*, steamer, 156, Stericker, for Morpeth, with sundries; *Tamar*, steamer, 130, Allen, for Morpeth, with sundries.

EXPORTS.

January 8.—*James Watt*, steamer, Captain Taggart, for Hobart Town: 1 case apparel, J. W. Byrnes; 1 case groats, 50 bags rice, 15 chests, 10 half-chests, and 15 ten-catty boxes tea, C. Wright; 200 half-boxes soap, A. B. Smith and Co.; 1 case slates, 1 case ink, 1 parcel stationery, W. A. Colman; 3 cases coal tar, John Taggart; 1 cask fruit, F. Hanson; 56 boxes tea, 6 quarter-casks wine, 50 cases brandy, B. Boyd and Co.

STEAM TO THE CLARENCE RIVER.—We understand that Captain Devlin, of the *Martha and Elizabeth*, has instructions to purchase the steamer *Courier*, now in Adelaide, should she be found suitable for the above river. The *Courier* arrived from England in 1839, and in 1840 Captain Devlin had instructions, from a house in Van Diemen's Land, to purchase her at £4500, but the owners would not take less than £6000. We believe that she can now be bought for a very small sum.

DIARY.

MEMORANDA FOR THIS DAY

January		Sun, rises	sets	High Water, morn.	even.
10	FRIDAY	4 57	7 3	9 15	9 37

First Quarter, Jan. 15, 55 m. past 6 afternoon.

TO CORRESPONDENTS.

Tickets-of-Leave are not granted for Sydney, and very few have been issued since the cessation of transportation. We cannot advocate the removal of those now in Sydney, (very few in number) as it would be an injustice to deprive them of the benefit of an indulgence obtained as a reward for good behaviour.

The Sydney Morning Herald.

FRIDAY, JANUARY 10, 1845.

"*Sworn to no master, of no sect am I.*"

THE PORT PHILLIP PLOT.

WHEN, during the late sitting of the Legislative Council, the junior member of that honourable body, Mr. BENJAMIN BOYD, threw out the extraordinary threat that, because the Council would not recommend the separation of Port Phillip from the Middle District, the Port Phillip electors would in future return only such members as should pledge themselves to vote with the Government on all questions, we were half inclined to give that gentleman a severe reprimand. Our reasons for not doing so were, first, because we could hardly think him in earnest; and secondly, because, whether in earnest or only indulging in that bounce and "Buncum" for which sundry of his local colleagues have become rather famous, he had received due castigation at the hands, the powerful hands, of Mr. WENTWORTH. We now find there was more in the threat than we had imagined. Its nefarious scheme was lauded by the last number of the defunct *Observer*, and is seriously urged upon the electors by several of the Port Phillip newspapers. We are therefore called upon to say something about it.

The Plot, as we understand it, is this:—that on condition the Government will induce all the official and nominee members to vote for separation, all the Port Phillip members shall "go the whole hog" in voting with the Government on other questions. The state of parties, the plotters compute, will then stand thus:—

Government side—Officials 6
Nominees 6
Port Phillippians. 6
— 18

Opposition side—All the rest.... 18
Less the Speaker 1
— 17

Majority for separation, and for Government, on *all* questions 1

The first enquiry is—Is the Plot practicable? and if it be, the next is—How would it work?

Is it practicable? Before we can answer in the affirmative, we must predicate four very monstrous things:—first, that the GOVERNOR could so far forget himself as to attempt to force twelve British gentlemen, of intelligence and virtue, to vote against their consciences; secondly, that these twelve gentlemen would so far degrade themselves as to submit to such dictation; thirdly, that the majority of the Port Phillip electors are so unprincipled as to be capable of entering into a conspiracy so disgraceful; and fourthly, that six respectable gentlemen could be found in the colony who would accept votes at the expense of their own independence and honour. We cannot believe in either of these articles separately; much less can we believe in the whole category. We therefore cannot believe in the possibility of carrying the Plot into execution. If any one of its four links should break, the other three would be useless; but our opinion of human nature is too favourable to admit of a doubt that they would *all* break. The project is, then, nothing but a wild chimera. It may have served Mr. BOYD's purpose in producing a *sensation*; it may serve the purpose of Melbourne newspapers in giving picquancy to their otherwise insipid articles. But in point of feasibility, there is no more sense or substance in it than in a jack-o'-lantern.

But granting it were practicable, how would it work?

The Port Phillip people—if their sentiments are not very unfairly represented by its press—are fervently radical; quite as radical as the most radical members of the Council, of whose radical measures the Port Phillippians radically approve. Well—according to the laws of the Plot, the six radical representatives of this radical constituency would be bound, both by the pledge under which they were elected, and by the terms of the compact entered into on the part of their constituents with the head of the Government, to set themselves, on *all* occasions, in fierce and uncompromising array *against* the radical party! Thus would the house of radicalism be divided against itself. Assuming the Government to be as despotic as the radicals assert, here would be an opportunity for their carrying in triumph the most despotic of their measures! No matter how subversive of public liberty—no matter how inimical to the rights of the people—no matter how perilous to the best interests of the country; the six Plot members would be compelled to support these measures through thick and thin! And then as to the measures proposed from the opposition side of the House, no matter how wise, how judicious, how rich in patriotism, how full of blessings for the whole community; if discountenanced by the Government, the Plot Six would have no alternative but to oppose them tooth and nail!

Thu would the highest interests of the colony be bartered away—*scandalously* bartered away—for the sake of a flimsy theory of local government!

Look at what is called the *Squatting* Interest. To use a word coined by its new champion, Mr. BOYD, Port Phillip is little else than one vast "*squattage*." The people live, and move, and have their social and commercial being, in the profits of licensed grazing. But on no question are the Government and the colonists more stoutly at issue than on that involving the rights and privileges of the licensed graziers. And how would the Plot members deal with this question? O say some of the Melbourne papers, this would be "an open question," on which the members would not be shackled. Indeed? Would Sir GEORGE GIPPS, if capable of entering into the Plot at all, give up this one darling point, upon which he has staked his personal fame, and the reputation of his Government? *Never!* He would insist, as a *sine qua non*, that in this mighty dispute the Plotters should go with him all lengths. Either they must promise this, or the treaty must perish at the threshhold. And if they did, what would be the consequence? Why, every inch of ground gained by the noble struggle of last year would have to be abandoned! The petitions sent up from all parts of the colony—the reports, and resolutions, and addresses of the Council—would have to be retracted, and disowned, and scouted! The famous regulations of April, 1844, and the no less famous recommendations sent home per *General Hewitt*, would, thanks to the influence gained by HIS EXCELLENCY from this blessed Plot, be declared capitally good, and be recommended to the most gracious consideration of HER MAJESTY and both Houses of Parliament!

And all for what? For the sake of some imaginary rights, some remote and contingent benefits, involved in separation. But never mind "for what." Were the end as momentous as it is frivolous—were the advantages to be achieved as substantial as they are fictitious, they would not, they could not, justify this flagitious expedient. *Nothing* could justify it. Indeed, the thing is so thoroughly wicked, so repugnant to every principle of moral rectitude, personal honour, and political integrity, that one can scarcely believe its abettors to be serious. The idea of requiring six men to pledge themselves, openly in the face of the world, to vote against their consciences, and to do this deliberately, systematically, and invariably, is too revolting to be entertained for a moment. Away with it!

LAW INTELLIGENCE.

CENTRAL CRIMINAL COURT.

WEDNESDAY.

BEFORE his Honor Mr. Justice DICKINSON.

UTTERING COUNTERFEIT COIN.

William Ball was indicted for having on the 26th of November uttered a counterfeit shilling, with intent to defraud one John Blackwell.

It appeared from the evidence adduced, that on the day named in the indictment the prisoner tendered a counterfeit shilling to the prosecutor Blackwell, at Wilson's public house, of which the latter was barman.

Another counterfeit shilling, similar in all respects to the one passed by the prisoner, was found in the till, and was supposed to have been given by the prisoner about a quarter of an hour before, as he had been there about that time and had given a shilling in payment for a glass of ale. No proof however was given of the prisoner having tendered the first bad shilling, excepting the presumption raised from the fact of his having denied that he had been before at Mr. Wilson's at all.

The prisoner, in defence, denied all knowledge as to the badness of the coin, and called two witnesses to character, from whose evidence it appeared that his previous reputation for honesty and industry had been very good.

His HONOR briefly summed up, leaving the Jury to form their own conclusions from the evidence they had heard, as to whether the prisoner really possessed a guilty knowledge at the time of uttering the counterfeit coin in question.

The Jury, without retiring, found the prisoner guilty, but recommended him to mercy on account of his previous good character.

He was then remanded for sentence.

FORGERY.

James Purcell was indicted for having in his possession on the 18th February, 1843, a certain cheque or order for £25, purporting to be drawn by Colonel Gibbes, in favour of George Coleson, and with having while it was so in his possession forged an endorsement purporting to be the endorsement of Coleson. By a second count of the indictment the prisoner was charged with passing off this endorsement as genuine, knowing it to have been forged.

The SOLICITOR-GENERAL briefly stated the circumstances of the case, and called

George Coleson, who stated that some time back he had had some dealings with Colonel Gibbes, to whom he had sold a quantity of timber, the prisoner being at that time in his (witness's) employ as a sawyer. The prisoner volunteered to go to Colonel Gibbes, with the view of endeavouring to procure some advance of money to aid in the completion of the order. On the same evening the prisoner returned to witness and said that Colonel Gibbes objected at that stage to make any advance; the prisoner did not come to work after this, but on being sent to for that purpose, came to witness and said that he contemplated going into some other business. The endorsement on the cheque produced was not in the handwriting of witness, but was an imitation, and witness could not say whether it was written by the prisoner or not; believed, however, that it was.

Mr. MICHIE, at the request of His Honor, undertook to watch the case on the part of the prisoner, and cross-examined the witness at some length, when he admitted having seen and drank with the prisoner two or three times after sending him to Colonel Gibbes; remembered the prisoner asking witness where he had been; remembered also the fact of the prisoner offering to lend him money, but had never asked for a loan; had never offered a partnership to the prisoner as a condition for an advance of money; the prisoner was employed at piece-work, and was at liberty to leave his work when he pleased; could not swear to the prisoner's handwriting.

Re-examined: Witness did not see the prisoner after having told him that he (witness) had been to Colonel Gibbes for a settlement, and was to call again.

John George Nathaniel Gibbes, Esq., Collector of Customs, stated that he had had dealing with Mr. Coleson, and that some person, whom witness believed to be the prisoner at the bar, called upon him with a bill from Coleson, and requested an advance, when witness said that he would look over the bill, and desired the man to call again in a day or two; in two or three days the man called again, and witness gave him a cheque in Mr. Coleson's favour for £25.

By Mr. MICHIE: The same person called on both occasions, and although witness could not swear positively to the prisoner at the bar, believed him to be the same.

James Henderson, teller at the Bank of Australasia, proved the payment of the cheque on the 18th of February, 1843—the day on which it bore date; could not remember however to whom it was paid; the cheque was endorsed before it was paid.

James Reynolds proved, that in the month of December, 1843, the prisoner came backwards and forwards to a Mr. Irwin, and witness having asked in the prisoner's presence what he came for, the latter said that he had received a cheque for £25 in favour of Mr. Coleson, from Colonel Gibbes, but had got drunk, spent part of the money, and lost the remainder; the prisoner therefore was desirous of borrowing the money from Irwin, and offered some furniture as security; Irwin having refused to do this, the prisoner asked witness to go to Coleson and enquire whether if he was paid his money he would compromise the matter; believing the prisoner's story, and feeling compassion for his family, witness went to Mr. Coleson as requested, and some time after this the prisoner said his brother-in-law had settled with Mr. Coleson, having sold some wheat and paid the prosecutor from the proceeds of the sale.

Patrick Irwin recollected the prisoner having come to him something about a debt between himself and Coleson; but could not remember the particulars.

By Mr. MICHIE: Had known the prisoner for many years, and, except that he was a drunkard, believed that his character was good.

By the SOLICITOR-GENERAL: Had heard of a charge made by Reynolds against Purcell; but this was since the present charge had been made.

By the COURT: Had often seen the prisoner in Sydney during the last two years.

The cheque was then read, and the case for the Crown was closed.

Mr. MICHIE addressed the Jury for the defence, contending that no satisfactory evidence, either of forgery or uttering, had been given. Upon the former point in particular there had been no evidence whatever, as the statement of Coleson did not even prove a similitude between the endorsement and the prisoner's handwriting. It was rather an astonishing circumstance that the prisoner should not have been sought after by Coleson during so long a period as two years, and this very fact went to show that there was something behind which had not come out. The whole extent of the prisoner's admission was, that he had made away with the proceeds of the cheque in drunkenness; but for anything that appeared to the contrary, the endorsement might have been made under Coleson's own cognisance, and the present prosecution resorted to as a mode of punishment for having spent the money.

The SOLICITOR-GENERAL replied, contending that there was sufficient evidence of forgery on the part of the prisoner for the Jury to draw a conclusion from, and that at all events the endorsement was clearly forged by somebody previous to the presentation for payment, which fact, coupled with the prisoner's acknowledgment of having received the money, was sufficient evidence of utterance with a guilty knowledge.

His HONOR, in summing up, remarked that as there was no direct evidence with reference to the charge of forgery, the jury would have to draw their inferences from the circumstantial evidence which had been brought before them, of which evidence they would have to give a careful review, and judge from the various sayings and actings of the prisoner how far he was identified either with the forgery itself, or with a felonious utterance of such forgery, if any had been committed. His Honor then read several authorities upon the nature of circumstantial evidence, and recapitulated the leading points of the evidence.

The Jury, after an absence of a few minutes, found the prisoner guilty, who was remanded for sentence.

STEALING.

James Booth was placed at the bar, charged with having, on the 26th of August last, stolen three £50 notes, the property of one John Weldon.

After a few introductory remarks from the SOLICITOR-GENERAL, John Weldon was called, and deposed, that on the 26th of August last he called upon the prisoner some time in the morning, and gave him two sovereigns to keep for him, stating at the same time that he had lost three £50 notes the evening before, and that three one-pound notes had been substituted in their place. Witness then got a clean shirt from the prisoner, and left in the charge of himself and his wife three £50 notes, and three £1 notes, which had been tied up in one corner of the shirt he had taken off. The prisoner and witness shortly afterwards went out together to the Police Office, the prisoner's wife remaining at home. Witness and the prisoner having parted company, witness went to his house to look for him, and finding him there, enquired for the money. Upon this the prisoner denied having received the money at all, and ordered witness out of his house. The prisoner, although still denying the receipt of the money, subsequently returned witness one of the sovereigns which witness had given to him. Witness made repeated applications to prisoner for the money, but was always refused, although witness remarked that the notes could be of no use, as payment had been stopped. Witness was perfectly sober, having drank only one glass of brandy on the morning in question, and having to the best of his remembrance drank nothing at Booth's.

Mr. MICHIE appeared for the defence, and cross examined the witness at considerable length with reference to his previous deposition, in which he had given a different account of the transaction.

Benjamin Sadler was then called and examined by Mr. PUREFOY, who, with the SOLICITOR-GENERAL, appeared for the prosecution, and stated that on the morning in question Weldon came to Booth's house and enquired for a shave and a clean shirt; the shirt was given to him, and witness shaved him; but while doing this, Weldon put his hand in his pocket, and pulling out a half-crown, sent for something to drink; after drinking, Weldon asked Booth to return him the three fifty-pound notes and one of the sovereigns which he had given to him, remarking that Booth might keep the rest. Booth denied having received the three fifty-pound notes, and Weldon subsequently said that if he had a sovereign he should be satisfied, upon which, Booth gave him a sovereign; Weldon then went away, but subsequently came to Booth's frequently, and ate and drank there, without having, in the hearing of witness, made any further enquiries for the money.

Rachel Weldon stated, that the notes in question were taken from her by her husband, who subsequently told her of the manner in which they had been lost. Witness spoke to Booth about the matter repeatedly, but he always denied all knowledge of the notes. Witness subsequently obtained the notes from Mrs. Booth.

Constable Von Goebert proved that the notes produced corresponded in their numbers to those which the prosecutor's wife had received from the Union Bank.

Inspector Pearce proved the apprehension of Booth, who being told of his wife having given up the three £50 notes, said that he could not be answerable for his wife's actions, and persisted in denying all knowledge of the notes on his own part.

This closed the case for the Crown.

Mr. MICHIE submitted that there was no case against Booth to go to the Jury, for taking even the evidence of Weldon, which was the strongest feature in the case, it could amount to nothing more than a bailment. The money, if entrusted to the prisoner at all, was clearly entrusted to him as a bailee for a particular purpose, and his failure to fulfil these trusts would not amount to a larceny, but to a trespass.

The SOLICITOR-GENERAL contended that in the transfer of the notes there had not been an actual giving up of possession, but only of custody, or in other words of the manual possession, in the same manner as a person might hire a porter to accompany him with a certain article to a certain place. At all events it would be a question for the Jury to determine whether at the time of taking the charge of the money the prisoner did not really contemplate the larceny with which he stood charged.

Mr. PUREFOY followed on the same side.

Mr. MICHIE having briefly replied,

His HONOR decided that the case must be sent to the Jury, leaving to the full Court the consideration of the point which had been raised.

Mr. MICHIE then proceeded to address the Jury for the defence, dwelling with much force upon the meagreness of the evidence, and particularly upon the contradictory and unsatisfactory nature of Weldon's testimony, unsupported as it was by the evidence of any respectable party. He also pointed out the absence of any evidence to connect the prisoner with the subsequent delivery of the notes by Mrs. Booth, except the unsatisfactory statements of Weldon; while, on the other hand, there was every probability of the money having been given up by Weldon to Mrs. Booth, while he was in a state of drunken forgetfulness.

His HONOR then proceeded to sum up, telling the Jury that it would be their province to determine in the first place, whether the prisoner really got the notes in his possession as stated by Weldon; and in the second place, whether, if he really got them, he had afterwards appropriated them to his own use, to the injury of the rightful owner. There were two other points which they would have also to consider, arising out of the arguments of the learned counsel for the defence; first, whether Weldon had really given the property to the prisoner to keep for him, as alleged; and, secondly, whether, supposing that to be the case, the prisoner did or did not contemplate a wrongful conversion of the money at the time he received it: for if he really contemplated such a conversion, and obtained the possession of the money for the purpose of carrying out his object, he would be guilty of larceny. His HONOR then read over his notes of the evidence.

The Jury after an absence of above half an hour returned, and made enquiries of the Judge as to what evidence there was of the return of the notes by Mrs. Booth. This question having been answered they retired again, and after an absence of half an hour more returned turned a verdict of not guilty.

The prisoner was then discharged, and the Court adjourned (at eight o'clock P. M.) till ten o'clock next morning.

DOMESTIC INTELLIGENCE.

INSOLVENCY PROCEEDINGS.

THURSDAY.

BEFORE the CHIEF COMMISSIONER.

A first meeting was held in the estate of John Hunt, but no claims were proved.

APPLICATIONS FOR CERTIFICATES.

The following insolvents having complied with the Act, had their certificates allowed them, viz.:—Stephen Lambton, Hero William Nichols, and John Murray. The consideration of the application of Richard Alexander Wiseman, was adjourned for a week; and that of Joseph Taylor, for a month.

MEETINGS FOR TO-DAY.

William M'Niece, a second meeting, at eleven o'clock.

Montefiores, Briellat, and Co., a first meeting, at two.

MEETINGS FOR TO-MORROW.

Joseph Taylor, a special meeting, at half-past ten o'clock.

Arthur Joseph Maister, a special meeting, at eleven.

James Ferguson, an adjourned special meeting, at eleven.

John Scutts, a special meeting, at noon.

CITY COUNCIL.

WEDNESDAY.

PRESENT: The Mayor and twenty-four Councillors.

REPORTS OF COMMITTEES.

The Report of the Committee appointed to consider the tenders for 1845 was brought up, recommending that the tenders of Mr. Alcock for printing, and Mr. Moffatt for stationery, be accepted.

A Report from the By-Laws Committee was also brought up.

KENT-STREET.

Two memorials from persons residing in Kent-street, where the street is being cut down, were presented, complaining of the difficulty of access to the houses.

FINANCE.

£62 10s., being a quarter's rent for the Town Hall, was ordered to be paid.

Seven distress warrants were ordered to issue against parties who had not paid their rates.

ASSESSMENT.

The Town Clerk was directed to summon the Ward Committees and valuators to meet on Friday (this day).

BAKER *v.* MOIR.

A letter was read from the City Surveyor, requesting that £63 0s. 9d., being the amount of the damages and costs in the case of Baker *v.* Moir, for which he had been arrested, and compelled to pay, might be paid out of the City funds.

Mr. COYLE moved, and Mr. IREDALE seconded the motion, that the amount might be paid, feeling convinced that the City Surveyor considered he had full authority from the Council for removing Mrs. Baker's fence.

Alderman FLOOD opposed the payment of the money. It was the duty of the officers of the Corporation to make themselves acquainted with the law, and if the Council did give any instructions that were wrong the officer should point it out to the Council—otherwise the officer must be responsible. He considered it to be a case similar to that of a magistrate, who, if he acts improperly, must take the consequences of his own actions. But in this case he denied that the Council had ever authorized the act, and individual members had no right to give instructions to or interfere with the Corporation affairs.

Several members spoke on each side of the question, and upon a division the payment of the money was ordered by a majority of 18 to 6.

ESTIMATES FOR 1845.

The Council then went into committee for the consideration of the report of the Finance Committee. (See Monday's *Herald*.)

Alderman BROUGHTON (who moved all the items) moved that £300 be voted for the payment of the salary of the Town Clerk, for the present year.

Alderman WILSHIRE moved that the sum be £400, which he considered the Town Clerk was fully entitled to, from the manner in which he performed his duties.

Mr. IREDALE seconded the amendment.

Several members expressed themselves totally opposed to any increase in such times as these, although they were of opinion that the Town Clerk performed the duties of his office in a most exemplary manner.

Mr. LITTLE moved that the salary be £250, which was not seconded.

Mr. FISHER moved that it be £350, upon which Alderman Wilshire withdrew his amendment, and seconded Mr. Fisher's.

Upon the question being put the salary was fixed at £300.

The salary of the Mayor's Secretary was, upon the motion of Alderman Wilshire, increased to £200 a year.

£104 for two messengers, £56 for stationery, £400 for printing and £75 for newspapers, £80 for preparing electoral lists, £275 for rent and fuel, £10 for incidents, £250 for the City Treasurer, and £100 for his clerk, were voted without any observations of importance.

Upon the motion of £325 for the salary of the City Surveyor and forage for one horse being moved, Mr. JENKINS moved that it be reduced to £250, which was seconded by Mr. NEALE.

Alderman FLOOD opposed the vote. If they had a properly qualified surveyor and engineer he should not consider the salary too much, but at present they had no occasion for such an officer: what they wanted was, a principal overseer. The Government, in fact, performs the duties of City Surveyor. In the *Herald* of that morning there was a long notice of streets being opened by the Government at the north end of the town, of which the Corporation and their Surveyor had no knowledge whatever.

After considerable discussion the vote was carried at £300.

£120 for the Clerk and Draftsman to the City Surveyor, £250 for the District Surveyor, £80 for the Clerk and Messenger, £120 for the Inspector of Slaughter-houses, £109 for the Superintendent of Water Works, £70 for the Collector at the Dock-yard, £20 for the Collector at Soldiers' Point, £45 for the Watchman at Lachlan Swamp, £100 for the repairs of fountains, and £30 for the fire brigade, were voted.

Alderman FLOOD stated his intention of asking the opinion of the Council upon the propriety of letting the water by public competition, and thus relieving the Council from the expense of all these officers.

The sum of £5000 was voted for expenditure for repairs of streets, without opposition, it being explained however that the sum was to cover all expense for tools, kerb-stones, and stones for surface drainage.

The next item was £6000 for sewerage. It was explained that this amount had been placed on the estimate of 1844 at the recommendation of the Board of Works Committee, but had not been expended, and was therefore continued on the present estimate in order that the recommendation approved by the Council before might be carried into effect.

On the question being put,

Mr. FISHER opposed it at some length, arguing that the citizens were not now in a position to bear such a tax as would be required to carry into effect a system of sewerage; that the sewerage would be practical, and therefore a tax must be levied on parties who derived no benefit, real or imaginary; and lastly, that under-ground sewerage had been shewn to be disadvantageous to public health in other countries, and would, in his opinion, be disadvantageous here.

Alderman MACDERMOTT supported the motion for the vote for sewerage. He denied that the benefits conferred would be merely partial, as the main sewer would be made in the line of street, which from its level would afford relief to the parts of the city on either side of it which were higher than the level of that street. He argued that there could not be a better time than the present for placing such a vote on the estimates, as there was little or nothing required from the citizens for other purposes; and further that the expenditure of the sum proposed would afford employment to labourers who could not otherwise procure it; also that the money would not be lost to the City, as it would be expended by those who earned it, and would only be circulated to return again to the city coffers. Including this £6000, the whole amount which would be required from the citizens would be, according to the new assessment, sixpence in the pound; and he added, if the Council did not vote the money now that the citizens were not called upon for other rates, they could not expect that the citizens would be willing to pay it when police and other rates had to be levied also.

After a very noisy and irregular discussion (of which but little could be heard at the reporters table) the question was put on Mr. Fisher's amendment, and the amendment was carried, consequently the amount for sewerage was struck out.

The sum of £120; for the Clerk of the George-street Market; £120 for the Clerk of the Hay and Cattle Market; £120 for the Wharfinger at the Market Wharf; £150 for Repairs to the George-street Markets; £25 for the Weigh-bridge; and £30 for incidents, were voted without much remark; also, £67 10s. for nine lamps, at £7 10s.

The Committee having disposed of the business, the Council sat again, and the resolutions of the Committee were reported.

Alderman BROUGHTON moved the adoption of the Report; and Alderman WILSHIRE seconded the motion.

Alderman FLOOD moved, as an amendment, that the Report be adopted with the exception of the salary of the Mayor's Secretary, which he moved might be reduced to £150 instead of £200.

Alderman MACDERMOTT moved an amendment, that the Report be adopted, with the addition of £6000 for general sewerage.

The Council divided—there were for the last amendment, the Mayor, Aldermen Wilshire, Macdermott, and Broughton, and Councillors Cowlishaw and Driver; against it—the seventeen others present.

The question was put on the other amendment for the reduction of the salary of the Mayor's Secretary, and the Council divided again; the amendment was negatived by thirteen to ten.

The Report of the Committee was adopted.

After some irrelevant conversation, the Council was adjourned to this day (Wednesday) fortnight.

AUSTRALIAN SUBSCRIPTION LIBRARY.—The half-yearly general meeting of the proprietors of the Australian Subscription Library was held yesterday afternoon, when seven proprietors and seventeen subscribers were elected. After the routine business had been transacted, Dr. Lang, alluding to various rumours which have been afloat for some time, enquired what was the state of the new building, when Dr. Ross, on the part of the Committee, entered into a long explanation, by which it appeared, that the eastern wall of the building is two inches out of perpendicular, inwards, in the first ten or twelve feet, and that the top overhangs about an inch. Various professional opinions had been taken—the weight of evidence being in favour of the safety of the building if certain alterations are made in the mode of supporting the roof. Dr. Lang moved that the various professional opinions might be printed for the use of the proprietary; but on account of their extreme length, it was considered that it would be better to avoid the expense, and leave them with the librarian for the inspection of the proprietors.

SUPREME COURT.—The Court was occupied during the whole of yesterday, from the time of opening, until ten o'clock, P.M., on the trial of J. Hawdon, Esq., of Broulee, for assault, of which he was found guilty, and was discharged after entering into his own recognizance to appear for sentence on Thursday next. An application was also made during the course of the day, by Mr. Lowe, for a postponement of the trial of Duvall and Bidell, for the murder of Mr. Warne, grounding the application upon an affidavit by Mr. Want, the attorney for the defence, that he was not prepared with the defence of the former. As the defence of Bidell, however, was ready, and as it was suggested by Mr. Lowe that the ends of justice would be best served by trying the prisoners separately, it was fixed that Bidell should be tried to-day, and Duvall on Tuesday next. The trial of Bidell will therefore commence at half-past nine this morning.

DR. M'PHEE.—In the *Herald* of December 26, there appeared a paragraph having reference to Dr. M'Phee, headed "mutilating the dead," respecting which we subsequently published a letter from that gentleman. As we understand that Dr. M'Phee considers we ought to have expressed an opinion upon the matter, we can have no objection to state that the word mutilation ought not to have been applied to the case. How far the law authorises medical men to dissect in this colony we cannot say, but so far as Dr. M'Phee's professional character is concerned his explanation might have been considered quite satisfactory.

ANOTHER NEW PAPER.—New journals succeed one another with such rapidity that it is difficult to keep pace with them. We have before us the first number of *The Sentinel*, a paper which the editor informs us is called for by the piety of the land. We do not know what may have induced the proprietors to come forward at this particular juncture, except that it appears to be the season for young newspapers, but they have produced a paper containing some very spirited writing, and although we have no great liking for controversial writing in newspapers, we are glad to find a staunch opponent of Romanism in the field, although more argument and less abuse will be found to answer better. There is a little too much self-conceit, but as they get older the writers will become more humble.

ALMANAC.—We have been favoured with a copy of the *Port Phillip Separation Sheet Almanac*,—although what connexion there is between an almanac and "separation" we are at a loss to conceive. This almanac, which is printed at the *Port Phillip Herald* office, contains the usual matter, with such local additions as have been considered necessary, and would therefore be useful in the counting-houses of all who have transactions with our southern neighbours. It is a very neat specimen of typography, equal to any we have seen in the colony.

LABOUR IN THE INTERIOR.—Mrs. Chisholm, to whom all classes of the community are so much indebted for her exertions in settling labourers in the interior, has returned from her trip to the southward. With the exception of two single men, who refused £15 a-year and rations, and have come to Sydney, the whole of the persons of the last party obtained employment at wages of from £12 to £15 a-year and rations. A party of twenty families leave Mrs. Chisholm's residence for Queanbeyan next week. We are sorry to learn that Mrs. Chisholm's arrangements will only allow her to make one more trip into the interior, as we are confident there are hundreds in Sydney who are doing no good for themselves or the community, who might be most advantageously employed in the country districts.

DOMESTIC SERVANTS.—It is often remarked, that of this class of immigrants a great scarcity has existed for sometime throughout the colony, but chiefly in Sydney. Experienced cooks, housemaids, and nursemaids, are only to be had at wages from £14 to £20, nor are coachmen and butlers to be had under £20 to £30—more than twice the rates of wages in England. As some time has elapsed since the arrival of such a class of immigrants, it is desirable that inquiries should be made on this subject, in order to collect proper information as to the necessity of such a supply.

WOOL, SHEEP, AND SADDLERY.—We are requested to remind the public that Mr. Samuel Lyons sells this day 68 bales of wool, and one bale of sheep-skins; also 596 head of sheep running at Darling Downs; and an assortment of saddlery. The sale will commence at 11 o'clock precisely.

GREAT GEORGE-STREET SALE.—By a strange inadvertence the day of sale of Mr. Chapman's property was omitted in yesterday's advertisement; Mr. Stubbs requests us to notify that it will positively take place on the premises, at twelve o'clock, on the 24th instant,—both the George-street and the Hunter-street properties, as per advertisement in yesterday's *Herald*.

JUDGE DOWLING'S LIBRARY.—The continuation of the sale of this extensive law library commences this day, by Mr. Stubbs, at two o'clock P.M., when the remainder will positively be sold, with several valuable works not in the catalogue.—*Communicated.*

PARRAMATTA STEAMERS.—A correspondent urges upon the proprietors of these vessels the necessity of making better provision for the comfort and security of passengers, by requiring each vessel to have a boat astern to let go in case of accidents, reserving a place close to the wharf in lieu of planks across other vessels, as well as room enough for the passengers when landing or going on board to pass without the obstruction and rude annoyance of the many loiterers who are permitted to congregate, some of whom are no doubt merely looking out for a chance. This hint may be acted upon at other places with the same advantage to the public.

OLD SOUTH HEAD ROAD.—The best of road-metal, lying within a hundred yards of this great thoroughfare, now so long complained of as being in a most dangerous state, has been carted for some months into the city for the repair of the streets; and it is now being carted all the way to Newtown for the same purpose; so that the resident population, and the hundreds whose daily business forces them to traverse this road, are tantalised with the sight not only of a famous garrison road close to it, but of the constant removal of materials, which the labour of a gang for a week would make available to effect a good temporary repair. It would, however, first be necessary that the Ordnance Department form a drain to carry off the water, which their late operations of levelling have caused to remain in pools upon the road during heavy rains.

THE CORPORATION MESSENGER.—John Macdermott, appeared before Messrs. Windeyer and Stirling, yesterday, charged with abusing Barron, the housekeeper of the City Hall, on Friday evening. After the evidence for the prosecution had been fully heard, Mr. Macdermott called a witness, who proved that he (the defendant) had had a great many unseemly words with the complainant, and that the first provocation emanated from the defendant. The Bench, therefore, ordered the defendant to enter into sureties to keep the peace towards the complainant, himself in £10, with two sureties in £5 each.

THE SYDNEY CABS.—James Banton, a cabman, in the employ of Mr. Curtis, of Hunter-street, appeared before Aldermen Flood and Macdermott, yesterday, charged with driving furiously through George-street South. The Bench dismissed the case with costs of court, remarking that the conduct of the Sydney cabmen was such as required the police to look strictly after them. The evidence on which the case principally hinged was that of Alderman Wilshire, who was in the defendant's cab at the time when the offence took place.

COMMITTAL.—Dorothy Kearns, a freed woman, was yesterday committed to take her trial for stealing 18s. from the person of a man named Handley, whom she had met in the street on Boxing-night, and persuaded to accompany her home.

NEWS FROM THE INTERIOR.

(*From our Correspondent.*)

PARRAMATTA.

QUARTER SESSIONS.—MONDAY.

BEFORE SAMUEL RAYMOND, Esq. Chairman.

John Ingram, of Windsor, was indicted for stealing a saddle, the property of John Adamson, on the 13th April. Adamson had been knocked down and robbed of his horse, saddle, bridle, and money, whilst coming from the races, and the saddle had been found with the prisoner, whose son proved finding it in the bush. Not guilty. Discharged.

Benjamin Carver was indicted for stealing a cow, the property of the late Sir John Jamison, in November, 1843; the cow was found in the yard of one Hatcher, since transported for cattle stealing. The prisoner proved that the cow was left in his charge by a man named Aull, and he was acquitted.

Andrew Moran was indicted for breaking into the dwelling house of Thomas Carty, of Windsor, on the 14th September last, and stealing a watch and a pair of trowsers. Guilty. Sentenced to be transported for ten years.

Margaret Murphy was indicted for stealing two sheets and a handkerchief, the property of Mr. Robert Shackles, of Church-street, on the 10th December. Prisoner was in Mr. Shackles's employment, and on her being about to leave her box was searched, and the sheets found concealed there. Guilty. Sentenced to six months' imprisonment with hard labour, the first and last fortnight in solitary confinement.

Patrick Meehan was indicted for an assault on Mr. Bell, at Camden, with a loaded pistol. Not guilty. Discharged.

Edward Riley, a constable in the Liverpool police, was indicted for suffering a prisoner named Green, entrusted to his charge to convey to Penrith, to escape. Not guilty. Discharged.

James Holmes pleaded guilty to a charge of larceny, and was remanded for sentence.

TUESDAY.

On taking his seat on the bench, the CHAIRMAN said that the bench had received and considered a petition from the inhabitants of Parramatta, praying the magistrates to alter a rule passed by them at the last sessions respecting Mr. G. R. Nichols, who, up to that time, had been practising as a barrister of that Court. On this subject the bench had come to an unanimous decision, which was, that it was not competent for them to reconsider a matter which had already been decided by a full bench of magistrates. The rule already made had been enrolled and approved of, and the only way of revising the same would be by a full bench attending and passing a new rule, rescinding the former one. He must express his regret that so many inhabitants had signed the petition, for though it purported to be deferential, yet calling on the magistrates to review their decision, it could not in substance be so considered. He expressed the opinion of the bench on the case, and he had no doubt that they would agree with him, when he said, that he for one would never court popular applause, but should be satisfied if he had the approbation of his own conscience. He would now conclude by saying that he considered that they had decided properly, as no reasons had been shown for reversing the decision.

James Holmes, who had pleaded guilty to a charge of larceny, was sentenced to be worked in irons for three years.

John Calderwood was indicted for stealing ten pounds of sugar, the property of Mr. G. Barker, of Church-street, Parramatta, on the 23rd October. Not guilty.

James Thompson pleaded guilty to a charge of stealing a tablecloth, the property of Maria Cope, of Windsor, on the 19th November, and was sentenced to twelve months' imprisonment and hard labour.

Jane M'Rae was acquitted of stealing a one-pound note and some silver, from the person of Margaret Fear, on the Parramatta Race Course, on New Year's Day.

Timothy Callaghan was found guilty of stealing a hat, the property of John Hough, of Windsor, on the 27th December, and sentenced to one month's imprisonment with hard labour.

PETTY THIEVING.—A young girl, about fourteen years of age, was taken into custody by Constable Byrnes, charged with bathing in the river in broad daylight, in company with a lot of boys. On bringing her to the watch-house, Jane Moss, residing in Sorrell-street, charged her with stealing a quantity of fruit from her garden. A woman named Catherine Hensey also preferred a complaint against her for stealing blankets and bedding. But as these charges could not be clearly substantiated, and as the police proved her to be a person of ill-fame, she was sent to Parramatta gaol for three months.

SELLING SLOPS.—A prisoner of the Crown, attached to the District Council, named James Dowley, was sentenced to be worked on the treadmill for two months for disposing of his slops.

DISGRACEFUL ASSAULT.—A man named Richard Shearle, was brought before the Police Bench, charged with an assault on an infant six years old, but as the only witness against him, who saw the offence, was a boy of seven years of age, he was discharged.

HIRED SERVANTS' ACT.—A hired servant to Mr. Edward Drinkwater, of Kissing Point, was sentenced to pay a fine of twenty shillings and costs, for refusing to work when ordered by his master.

NEW MAGISTRATE.—William Thornton, Esq., was on Monday sworn in before the Court of Quarter Sessions, as a magistrate of the territory.

THE CONCORD WATCHHOUSE.—Several respectable gentlemen residing in the neighbourhood of Concord have complained to us of the delapidated state into which the Concord watchhouse has been allowed to fall. Not one of the cells is thoroughly secure, and the doors to most of them are either rotten or broken. A word from the Police Magistrate to the proper quarter would remedy this evil.

DARING BURGLARY.—On Saturday evening last, Mr. Robert Hincherd, of Concord, was roused by some persons knocking at his door. On enquiring who was there, the reply was, a friend. He consequently opened the door, when four men, masked and armed, entered the house, and one of them seized him and held him securely, whilst the others ransacked the house. After gathering a booty they decamped, taking with them a quantity of goods and wearing apparel.

A RUNAWAY.—The man Holmes, who on Monday pleaded guilty to a charge of larceny, has turned out to be a runaway from Hyde Park Barracks for the last twelve months.

PREVARICATION.—Margaret Fear, a ticket-of-leave holder, who gave evidence in a case of robbery, was sentenced by the Bench to have her ticket cancelled for gross prevarication.

ACCIDENTS FROM NEGLECT.—Hardly a day passes without an accident taking place at the falls below the Emu Ferry, at the Nepean River. On Sunday last one dray upset twice in endeavouring to cross. These accidents arise from the drivers of drays endeavouring to escape the toll for crossing the river by the ferry, and hardly a dray gets over safe. We should recommend the owners of drays to give particular instructions to their men to pass by the punt, as, independently of the danger, the wool but too often gets wetted and spoiled by being upset into the river.

ORIGINAL CORRESPONDENCE.

THE RIGHT OF PEREMPTORY CHALLENGE.

To the Editors of the Sydney Morning Herald.

GENTLEMEN,—When the very voluminous letter of the Judges touching "the administration of justice" appeared in your paper of the 29th November last, I read it through with that attention to which the high position of its framers entitled it. Differing as I do from those learned gentlemen in many of the positions which they advanced, it was my intention to trouble you with a few words by way of commentary upon that production; but the length of the task has hitherto prevented me from carrying that intention out. There is one point, however, adverted to, which (particularly as the Criminal Court is now sitting) I cannot allow to pass any longer without some observation.

Towards the conclusion of their letter the learned Judges remark, that "the only other head of reduction that occurs to us is, that respecting jurors in capital cases the right of peremptory challenge to the very inconvenient and useless number of twenty exists; but in these the right is (within our experience) never exercised. *In cases less than capital the same right has been supposed to exist*, and it is sometimes mischievously exerted for no other end than that of defeating or delaying justice; *but the better opinion would seem to be, that in such cases there is no right of challenge except for cause assigned.*" That doubts were entertained by some lawyers whether this right of peremptory challenge could be claimed in every case of felony, whether capital or not, is well known; and Blackstone himself seems not to be quite certain on the point, for he merely observes, that "in criminal cases, *or at least* in capital ones, there is, *in favorem vitæ*, allowed to the prisoner an arbitrary and ca-

pricious species of challenge to a certain number of jurors without showing any cause at all, which is called *peremptory* challenge—A PROVISION FULL OF THAT TENDERNESS AND HUMANITY TO PRISONERS FOR WHICH OUR ENGLISH LAWS ARE JUSTLY FAMOUS." [B. Com. 4, 353.] I have marked this last paragraph in small capitals, by way of contradistinction to the observations of our *three colonial Judges*, touching the right of peremptory challenge "TO THE VERY INCONVENIENT AND USELESS NUMBER OF TWENTY;" an observation which in my humble judgment those learned persons might as well have kept to themselves. Notwithstanding the existence, however, of the before-mentioned doubt, it has always been a practice in the English Courts to allow a peremptory challenge in every case of felony, and so far as I am aware the practice has never been actually resisted — a circumstance which speaks rather strongly against the supposition of the *better* opinion being the other way. I have always understood that the *better* opinion was in accordance with the actual practice; and by the London *Times* of the 3rd and 5th of September last, I find that the point has been solemnly settled by the highest tribunal in the country, after having heard the opinion of eight of the Judges of Westminster Hall. That decision and those opinions, with one exception only, are in accordance with the practice: thus conclusively showing that the *better* opinion is, as it ought to be in a matter of this kind, *in favour of the liberty of the subject.*

The case alluded to was "Samuel Gray, plaintiff, against the Queen, defendant, in error." "This case," to quote the language of the *Times*, "was brought up from the Court of Queen's Bench, in Ireland, and the question at issue was the right of defendants in Ireland to peremptory challenge of the Jury, in cases of felony not punishable with death. The appellant, Samuel Gray, was tried at the Monaghan assizes, in 1843, for shooting at a person named Cunningham, with intent to kill him. Gray challenged peremptorily some of the jurors as they were called to the book, but this challenge was disallowed by the Court. Gray was convicted, and sentenced to transportation for life. He insisted upon his right of peremptory challenge, and sued out a writ of error, for the purpose of bringing the judgment under the consideration of the House of Lords."

After counsel had been heard, the Judges to whom the matter had been referred gave their opinions as follows:—Seven of them—Wightman, J.; Coltman, J.; Williams, J.; Patteson, J.; Tindall, C. J.; Gurney, B.; and Pollock, C. B.,—stating their opinions *seriatim* to the effect, that although the privilege had been spoken of in the early writers as one granted *in favorem vitæ*, yet that there was nothing to show that it did not extend to all cases of felony, and that if the Legislature had intended to restrict the privilege to capital felonies, they would have used express words in the statute. They were all of opinion that the appellant's challenge ought to have been allowed. Baron Parke dissented from his learned brethren, his opinion of course not being the *better* one. These opinions were delivered on the 2nd September; and on the 4th of September, the Lord Chancellor having declined to add anything to the able arguments of the Judges, said, "he had felt quite satisfied that the conclusion at which they had arrived was the correct one, and he therefore moved that the judgment of the Court below be reversed." Lord Brougham concurred, stating "that it did not follow that the right of challenge was not general in all cases of felony, although the reason drawn from the origin of that right had been justly stated to be in favour of life."

Lord Campbell in concurring, observed, "that he should be extremely reluctant without the most satisfactory authority to sanction a practice such as that recognised by the judgment of the court below. According to the allowed intrepretration of the statute, the Crown had the unlimited right to peremptory challenge, and to allow not a single challenge without distinct and sufficient cause shewn therefor to the prisoner, where the punishment to be inflicted on him might be transportation for life, or for a number of years, would, he conceived, be inconsistent with all rules of justice."

I hope this mention of this recent and important decision will prevent any of our Judges at the present Criminal Sessions from improperly interfering with the right of peremptory challenge in a case of felony, if any prisoner should think proper to claim it.

O.P.Q.

CRICKET.

To the Editors of the Sydney Morning Herald.

GENTLEMEN,—In your journal of this day, appears a challenge to the colony from the Australian Club, to play for any amount, from one pound per bat upwards. Every lover of the game must hope that this public challenge will be taken up. There are many English cricketers in the place, who would gladly join in contesting the palm, but do not know how to get the affair in a train, and I would suggest that the Victoria Club should select the *élite* of their players, and invite *publicly* such cricketers as might be desirous of playing, to send in their names.

I mention this with no intention of disparaging the Victoria Club, but it is quite clear that as a club, they are, this season, quite unable to take the field, but as a portion of their number are thorough cricketers, it is to be expected that they will not be disinclined to take the arrangement of the match into their hands, and there is no doubt it will produce the most interesting contest ever played in the colony.

Your obedient servant,
STUMPS.

January 7.

BIRTH OF A PRINCE.

To the Editors of the Sydney Morning Herald.

GENTLEMEN,—Can you inform the public how it has happened, that although the official account of the birth of another British Prince has been duly published, the event in question, so gratifying to every loyal subject of Her Gracious Majesty, has not been marked by rejoicing of any kind in this colony? Is it from remissness of the authorities, civil or military, that no salute has been fired, or any of those demonstrations exhibited, which are usual on similar occasions? I hope not; but as celebrations have taken place almost every where else, I see no reason why in New South Wales there should be an exception.

Your obedient servant,
PUBLICOLA.

To the Editors of the Sydney Morning Herald.

GENTLEMEN,—All the blessed week have I been waiting in town to sell my wool at the prices which were current last week, (before it arrived), but I have been constantly met with the assertion that wool is down from 1d. to 2d. per lb., in consequence of a fall in the exchange.

Now, as one of my neighbours had returned from Sydney with the information that wool was fetching a "fairish price," owing to a rise in the English market, you may imagine my surprise at being met by such a reduction in so short a time. I will confess that I am no great adept at comprehending the complicated movements in the operations of the exchanges; they have always appeared to my stupidity first-cousins to the thimble-rig game among the sharpers at the race-course, the manager of the concern always puts the pea in whichever thimble he choses. I shall never forget the visage of a villain at Epsom, who did me out of a new half sovereign when a school-boy. Early impressions are very strong, and they came over my mind afresh, by a comparison with these exchange operations, very unpleasantly.

Although pretending to be no more than a very plain dealing man, I shall endeavour to look into these movements—to understand them.

First, I should like to know what is the cause of this fall that so frequently occurs as the settlers' wool comes to market, and if it is not caused by monopoly? What business have we to tolerate Banks that can any day cause a fall of 2d. per lb. in our staple commodity.

I take it that the squatting regulations are intended to screw all out of us that legitimately can be taken; and if we are to be given over to the spoiler, I for one prefer being despoiled according to law, and not according to caprice. And if so large a profit is to be made by the exchange as to tempt the cupidity of Banks—to turn them into mighty thimble-riggers—to raise and depress it as may best suit their purposes—I humbly submit that the profit ought not to go into the coffers of establishments that fatten on us in such a way, but into the coffers of the public, through the medium of a State Bank, under responsible Government management, within the colony.

The taxes we pay on squatting stations have at least this merit, that they go to the Land Fund, and are instrumental in bringing out labour; this new tax to the bankers is oppressive in the extreme, and goes solely to the maintenance of the *oppressors*, and to perpetuate a system which ought at once to be knocked on the head.

It must be quite evident to you, gentlemen, that such a state of things should not be tolerated, which enables any institution to say (irrespective of the English market) your £100 worth of wool is worth £100 at one period of the year, and only £92 10s. at another. Why should the Banks give notice that they want to *sell* their bills when the settler wants to sell his? If they want to buy, which is, I suppose, the real meaning of it—why don't they say so? In offering my wool I find every one says they would give me so much more if the exchange was more favourable. Now who is it settles these thimble-rig exchange operations? Is it the Commissariat, as it used to be, and ought to be? We were never so well off as when Treasury Bills were at 1½ pm., and wool at par (if I may so call it). Why is it not so now? Is it that the colony is not considered to be on a par with the Banks? If so, I think it would be better for us settlers that the colony had the upper hand. I have expressed my ideas on the determination of the Banks, as it appears to me to depreciate the value of the fleece to the persecuted grazier most exorbitantly; and I am glad to find other of your subscribers are raising their voices. "Settler" expects the discount on bills will be 10 per cent.; and "Gaffer Gray" takes credit for great forbearance on behalf of the Banks in not extracting 12 or 15 per cent. from the poor squatters. Here is a state of things, brother graziers; you are called upon to respect the conduct of these Banks if they take ten per cent., because they could have taken fifteen per cent.;—'tis only a "whipping," the "scorpions" are to come. Is it not thus shown that the grazier is wholly unprotected, and can with impunity be screwed up as tightly as his own wool bales, at the will of those who should be considered dependent on their prosperity.

"Oh! 'tis most foul and unnatural." Just look at ten per cent. on all our exports: the Banks to have every tenth fleece and cask of tallow, every tenth hide, and every tenth sheaf. It were better (it would be some mitigation) they were made to take their tithe in kind, for as it now is they have the benefit of the Commutation Act, and the vicar's full tenth of the *gross* produce. Would that my petition should be complied with, and if they are to have all these, let them also shear the sheep, melt the tallow, and flay the hides of their share.

If our total exports are a million, at ten per cent. discount the colony pays £100,000. Brother squatters and settlers, pause again, and reflect on this. How many immigrants would a like sum bring annually to our shores—starving unemployed Englishmen? How many of you would this find bread for? Ye shipowners of Britain, how many vessels would this give an outward freight of emigrants to? Enabling your vessels to extend their voyages to the utmost parts of the globe, instead of rotting in your docks.

A SUFFERING SQUATTER.

To the Editors of the Sydney Morning Herald.

GENTLEMEN,—Having given a dog a bad name, the old adage recommends hanging as the next step that ought to be taken, and certainly as regards the bipeds of this establishment, every desire is evinced by certain parties on all occasions to go as far as possible in carrying out this recommendation, but it would be as well if some *little* regard was paid to truth in bringing forward accusations against them. In a paragraph in the second page of your paper of to-day, relative to a robbery in Kent-street, it is broadly asserted that "all the prisoners (or offenders) are convicts;" now, it so happens, that *not one* of them is a convict, unless a woman assigned to her husband. It is quite true that the inmates of Hyde Park Barracks have abundance to answer, without having the exploits of a gang of notorious Sydney thieves laid to their door

I am, Gentlemen,
Your obedient servant,
VERITAS.

Hyde Park Barracks, January 9.

MARRIAGES.

On Thursday, the 9th instant, at Trinity Church, by the Right Reverend the Lord Bishop of Australia, Thomas Walker, Esq., Assistant Commissary General, to Julia Bourke, eldest daughter of Thomas Wharton Ramsay, Esq., Deputy Commissary General.

By special license, at St. James's Church, Sydney, on the 9th instant, Robert Bonnor, Esq., of Bathurst, to Mrs. Euphemia May Davies, of Parramatta

DEATH.

At Petty's Hotel, on the 9th instant, Frederic, youngest son of Nelson Simmons Lawson, Esq., of Prospect.

ABSTRACT OF SALES BY AUCTION.

We insert for the information of the public an abstract of all the public sales which take place

THIS DAY.

MR. R. FAWCETT.—At his Rooms, at half-past 10 o'clock, Bleached Shirting, Pickles, Sauces, Ironmongery.

MR. S. LYONS.—At his Mart, at half-past 10 o'clock, Colonial Pork, Butter, Tongues, Tobacco: at 11 o'clock, Sheep, Wool, Saddlery, &c.

MESSRS. DAVIDSON AND RUDD.—At their Rooms, at 12 o'clock, Wines, Spirits, &c.

MR. W. G. MOORE.—At his Rooms, This Evening, Books, Engravings, Stationery, &c.

MR. J. G. COHEN.—At his Rooms, at 11 o'clock, Haberdashery, Hosiery, Boots and Shoes, Furniture, Pianofore, &c.

MR. STUBBS.—At his Mart, at 2 o'clock, Law Library.

MR. MORT.—At his Rooms, at 11 o'clock, Household Furniture, Pictures, Books, and Sundries.

COUNTRY SALE.

MR. SLOMAN.—At his Rooms, Bathurst, January 29, the Crown Inn, and Land at Diamond Swamp.

NOTICE

MR. T. W. PALMER, Post Office, Wollongong, having received the accounts up to the 31st instant, due to this Office, from persons residing in that district, is authorised to collect such accounts forthwith; and where they are overdue, he is instructed to proceed against them in the Court of Requests, or, if not within that Court, then to commence proceedings in the Supreme Court.

KEMP AND FAIRFAX, Proprietors.
Sydney Morning Herald Office,
December 24, 1844.

FOR HOBART TOWN.

(To sail on Sunday next, 12th instant.)

THE well-known packet-brig *LOUISA*, 181 tons, J. C. Tucker, commander.

This vessel will sail as above, wind and weather permitting; has first rate accommodations for passengers, who will be provided *with provisions, wines, ale, porter, &c., without any additional charge*, and the rate of freight and passage lower than any vessel in the trade. Apply on board, at the *Circular Wharf*, or to

JOHN MACNAMARA,
Hobart Town Packet Office,
558 Queen-street

FOR ADELAIDE, VIA MELBOURNE.

THE BRIGANTINE *Martha and Elizabeth*, A. Devlin, will sail for the above ports on the 16th instant. For freight or passage apply on board, at Kellick's Wharf, or to

SHEPPARD AND ALGER.
January 10. 535

NOTICE TO SHIPPERS TO MELBOURNE.

SHIPPERS PER *WAVE* are requested to complete their shipments by This Evening. Apply on board, at Wilson's Wharf; or to

548 SHEPPARD AND ALGER.

FIRST VESSEL FOR AUCKLAND.

THE fine new Brigantine *COOLANGATTA*, 120 tons burthen, is now ready to receive cargo, and will be dispatched for the above port on Thursday, the 16th instant; has good accommodation for cabin and steerage passengers.

For freight or passage apply on board, at the Circular Wharf; or to

JOHN GIBLETT,
566 292, Pitt-street.

FOR CEYLON.

THE SHIP *AGINCOURT*, Captain Neatby, will be despatched for the above port in ten days, affording a desirable opportunity for passengers to India, and the overland route to England; also, to shippers of horses—recent advices from that island name these being wanted. For freight or passage apply to Captain Neatby, or to

532 SMITH AND CAMPBELL.

FOR LONDON.

For Light Freight and Passengers only.

THE FAST-SAILING BRIG *ELEANOR*, 253 tons, Captain M'Farlane, has only room for 350 bales wool. For freight or passage, apply to the Captain, on board, to Mr. M. Joseph, or to

J. B. METCALFE
January 9. 556

FOR LONDON DIRECT.

For Steerage and Intermediate Passengers.

THE British-built Brig *CAROLINE* will sail positively on the first of March next; has room for thirty tons of dead weight only. Apply to

ISAAC SIMMONS,
City Mart, 474, George-street.

P.S. The above fine little vessel will be fitted up with every comfort and convenience for Steerage and Intermediate Passengers; she carries no wool, and will be well found with stores, &c. 553

MANCHESTER UNITY OF INDEPENDENT ODD FELLOWS.

THE Brethren of the above Institution are requested to meet at the Fountain of Refuge Lodge, Odd Fellows' Hall, George-street south, THIS DAY, at three o'clock P.M., to attend in procession the Funeral of their departed Brother, Mr. S. Chapman, of Ultimo Estate. By order of J. Smith, N.G.

HENRY THOMAS,
572 Undertaker.

SCOTS CHURCH, MACQUARIE-STREET.

THE Chapel in Macquarie-street, formerly occupied by the Wesleyans, will be opened on Sabbath first (the 12th instant), as a Presbyterian Church, in connexion with the "Synod of Australia," under the Ministrations of the Rev. Thomas Mowbray, A.M., lately of Port Phillip.

The Rev. John Tait, of Parramatta, will preach on the occasion.

Worship will begin at 11 o'clock A.M., and 7 P.M.

A Collection in aid of the Funds of the Church will be made at both services.

Sydney, January 9. 528

TO THE GROCERS OF SYDNEY

THE assistant grocers of the various establishments beg leave to return their most sincere and heartfelt thanks to those employers who have kindly come forward in the humane act of liberating their young men from a slavish thraldom, by closing their various establishments at eight o'clock. They only hope that those few who have not complied with the rule will follow the example set them. 574

JUST PUBLISHED,

SCIENTIFIC DREAM, Voyage to the Moon, &c., &c., which is an illustration of the double motion of the Earth—the appearances at the Poles under supposed favourable circumstances—the Earth's parallel position, as well as its position with respect to the Sun—the Principles of Navigation—the Laws of Gravity, and so forth, in a visionary manner or dream, simplified so as to suit the meanest capacity. To which is added Dr Goldsmith's Map of the World, in two hemispheres; and other maps and charts examined and explained,—clearly showing that all maps and charts are erroneous, and cannot be otherwise, by John Moorshead. Second edition: price 1s. 6d.

Printed for the Author, and sold by him, wholesale and retail, at 101, Pitt-street South. Hawkers supplied.

OPINION OF THE PRESS.

Mr. Moorshead has again put in his claim to originality of method, and instructive peculiarity of thought and argument, in another useful little work, entitled "Dr. Goldsmith's Map of the World, in two hemispheres; and other Maps and Charts examined and explained, &c.; which has issued from the press since the first Number of the "Scientific Dreams." If the privilege of a harmless Parody be allowed us, we may augur, that after becoming acquainted with his novel and peculiar expositions,

"Pupils will think who scarcely thought before,
And those who always thought will think the more."

In the short and unostentatious dissertation on Maps, Charts, and Trigonometical Surveying, the unlearned may find many points of interesting and useful information, conveyed in plain but forcible language; and in his ingenious hypothesis of an excavated terrestrial globe, and the adaptation of its collapsed exterior to a plane surface, will give rise to a variety of new ideas, useful to the diligent geographical student, and amusingly instructive to the general scholar.

We may admit that many of the author's suggestions are truisms, but the facts are not the less important; and those who are inclined to disregard a problem because of its seeming simplicity, should recollect the well-known appeal of Columbus to the egg.—*Adelaide Observer.* 449

Charlotte-place,
9th January, 1845.

S. ELLIOTT will sell, to reduce his stock, for cash—

Quart pickles, silver topped, at 1s. 8d. each
Pints, 1s. each
Large bottles capers, 1s. 6d. each
Champion's strong vinegar, 3s. per gallon
Walnut catsup, in pint bottles, 1s. each
Mushroom ditto, 1s. 3d. each
Fresh soft shell almonds, 10d. per lb.
Currants (large Patras), 7d. per lb.
Sperm candles, 1s. 7d. per lb.
Cavendish tobacco (best), 2s. 9d. per lb.
Ginger-beer corks, 1s. 6d. per gross
High-dried Lundifoot, 2s. 6d. per tin
Good black tea (not less than 6 lb.), 1s. per lb.
Ten pound woolpacks, 6s. each
Colonial soap, 25s. per cwt.
Superior porter, 7s. per dozen. 547

BACON! BACON!!

ON SALE, at the Stores of the undersigned,—a large quantity of Prime Colonial Bacon, at a very low price, for CASH. Also, every article comprising a General Stock of Groceries, at very *moderate* prices.

P. PALFREY'S,
Grocery and Provision Store, 385, George-street, next the Savings' Bank. 573

MANILA CIGARS,

NO. 3 and 4a superior, ex *Elizabeth*, sample very choice, may be had in or out of bond.

551 ROBERT PORTER.

LIVERPOOL SALT.

ON SALE, at the Stores of the undersigned; One hundred tons, in fine condition, ex *Colombian*

R. M. ROBEY,
546 427, George-street.

NOW LANDING,
Ex *SARAH BIRKETT.*

MR. GEORGE A. LLOYD has received instructions to sell by private contract

ONE HUNDRED AND FIFTY-FOUR PACKAGES

Of Drugs and Groceries, just arrived, and landing, per *Sarah Birkett*, consisting of—

Epsom salts
Creta Preparata
Turkey gum arabic
Cream of tartar
Soda carbonate
Washing soda
Fine chamomiles
Carbonate of ammonia
Balsam copaiba
Burgundy pitch
Poppy-heads
Jamaica ginger
Salad oil
Carraway seeds
Flour of sulphur
Castor-oil
Turkey rhubarb, camphor, Turkey opium
P. ipecacuhana, P. jalap, empl. adhesio, calomel, plaister-skins, jeweller's rouge, calcined magnesia, quinine, lint, and a variety of other articles.

The goods may be seen as they are landed, at the stores of the undersigned, who is now prepared to treat with parties wishing to purchase.

GEORGE A. LLOYD,
592, Lower George-street,
Two doors from the *Herald* Office.

Sydney, January 6.

P.S.—As most of the articles in these invoices are in great demand, purchasers should make early application, or they will find themselves too late. 570

WARDELL'S WINE.

PORT and Sherry, in wood and bottle
Choice Claret, in cases.

ALSO,

Page's Port, in pints and quarts
Together with the usual stock of Foreign and Colonial Wines and Spirits.

552 ROBERT PORTER.

HOOP IRON.

26 TONS, from 1 inch to 3 inches, now landing ex *Sarah Birkett.*

SHEPPARD AND ALGER,
533 468, George-street.

BRICKS! BRICKS!! BRICKS!!!

JUST landed, and for sale at the Market Wharf, a quantity of excellent Bricks, at 19s. per thousand. Apply to Mr. Joseph King, Paterson River Hotel.

Sydney, January 9. 549

FOR SALE, by the undersigned,—FRESH BUTTER, in kegs, ex *Martha and Elizabeth*

COLONIAL TOBACCO, Boydell and other brands, at lowest market rates.

SHEPPARD AND ALGER,
534 468, George-street.

EIGHTEEN SHILLINGS per Cwt. SODA.

WILLIAM BARNETT,
545 Opposite the Market.

BANK SHARES.

PARTIES holding Powers of Attorney for the sale of Colonial Stock may, at present, remit to London at the following rates:—

New South Wales Bank, at 85 per cent.
Commercial Bank, at 95 per cent.
Union Bank, at par.

W. BARTON, Share Broker,
591, George-street.

January 10. 564

NOTICE TO CREDITORS.

In the Insolvent Estates of MONTEFIORE, BRELLAT, AND COMPANY, of Sydney; and MONTEFIORE, FURTADO, AND COMPANY, of Hobart Town, Merchants.

THE CREDITORS, and all parties holding Powers of Attorney against the above Insolvent Estates (or the individual partners thereof), are requested to attend the first meeting, THIS DAY, at the Insolvent Court, at 2 o'clock P.M.

CLARK IRVING,
Official Assignee.

No. 327, Castlereagh-street,
Sydney, January 10. 526

APARTMENTS WANTED

FOR two Gentlemen, to consist of two bed-rooms and sitting-room, with attendance, but without board. Address, post paid, to F. W., *Herald* Office. 531

PRIVATE LODGINGS.

WANTED, by a Gentleman, in the house of a respectable family, a sitting and bed room, with attendance. Address G.R., at the *Herald* Office.

N.B. George street, or the Brickfield Hill would be preferred. 550

WANTED, a Precentor for the *Scots Church*, Macquarie-street, for particulars apply to

WILLIAM BUYERS, Secretary,
529 66, Hunter-street.

SERVANTS WANTED.

A MAN and his Wife, without incumbrance; the man must be accustomed to horses, and the woman a good house-servant. Testimonials as to character required. Apply to

MR. NICHOLSON,
536 H. M. Dock Yard.

WANTED, a Nurse Girl, about fourteen years of age, to take charge of an infant; and to make herself generally useful. Apply to Mrs. Peck, No. 4, Phillip-street. 544

WANTED, a good woman Cook, for a private family. Apply to Mrs Petty, Petty's Hotel, January 10. 543

WANTED, a steady woman as Plain Cook.

ALSO,

A respectable young woman as Nurse and Needlewoman. Apply to

MRS. G. H. POLLARD,
522 Glebe.

WANTED, a woman as general House Servant. Apply B. B., *Herald* Office, for address. 571

WANTED, a Female Servant. Apply to Mrs. Lowater, "Harp and Shamrock," corner of York and Market streets. 554

WANTED, a Coachman of good character; the preference will be given to a single man. Apply to Mrs. Cooper, Smart's Buildings, Rushcutter's Bay, Lower South Head Road. 523

FARM SERVANT.

WANTED, a man as Gardener, and to make himself generally useful upon a farm thirty miles from Sydney. Apply to

JOHN GIBLETT,
292, Pitt-street.

Also, a single man as Cook and general servant, in Sydney. 565

ONE POUND REWARD.

LOST, between Parramatta and Penrith, a Pocket Book, containing two orders on Nelson Lawson, Esq., and various memorandums and receipts, of no use to any person but the owner. Whoever has found the same and will bring it to Mr. Edward Smith's, White Horse Cellar, Parramatta; or Mr. John Perry, Penrith, shall receive the above reward.

Penrith, January 8. 530

OFFICES TO LET.

TWO ROOMS on the ground floor, at No. 555, George-street North, adjoining the Bank of Australasia. Apply on the premises. 538

WINDSOR.

TO BE LET, a commodious Dwelling-house, known as York Lodge, with coach-house, stables, and paddocks, suitable for the residence of a respectable family. Apply at the Parsonage, Windsor. 527

TO LET,

AN excellent DAIRY FARM, containing 600 acres, situated on the LIVERPOOL ROAD, about thirteen miles from Sydney, well watered, and having on it an EXCELLENT COTTAGE and outbuildings—with GARDEN and a splendid ORCHARD, NURSERY, and VINEYARD.

ALSO,

An excellent FARM of 100 acres, joining the above, having on it a COTTAGE and outbuildings, and a good GARDEN.

For further particulars, apply to

A. & S. LYONS,
537 Pitt-street, Sydney.

SALES BY AUCTION.

THIS DAY, AT HALF-PAST 10.

COLONIAL PORK, BUTTER, TONGUES, AND TOBACCO.

MR. SAMUEL LYONS will sell by auction, at his Mart, corner of George-street and Charlotte-place, THIS DAY, 10th JANUARY, At half-past ten o'clock, (Before sale of the Wool and Saddlery,)

Two barrels best colonial salted pork
Three kegs prime colonial butter
One barrel salted tongues
Three kegs colonial tobacco.

Terms at sale. 557

FRIDAY, JAN. 10, 1845, at 11.

596 HEAD OF SHEEP.

IN THE INSOLVENT ESTATE OF CHARLES COXEN.

BY ORDER OF THE OFFICIAL ASSIGNEES.

MR. SAMUEL LYONS will sell by auction, at his Mart, corner of George-street and Charlotte-place, THIS DAY, THE 10TH JANUARY, At Eleven o'clock,

The following Flock of Sheep, now running at Mr. Hugh Ross's Station, Darling Downs:—

346 Ewes
250 Wethers

596 head, more or less,
With about 300 Lambs.

Terms at sale. 8647

FRIDAY, 10TH JANUARY, AT 11.

68 BALES WOOL.

MR. SAMUEL LYONS will sell by auction, at the Mart, corner of George-street and Charlotte-place, THIS DAY, 10TH JANUARY, at 11 o'clock.

In the Insolvent Estate of Charles Coxen.

By order of the Official Assignee.

Thirty-one bales fine-fleece Wool
One bale Sheep Skins
Four Hides

In the Estate of R. Dacre.

By order of the Trustee.

Twelve bales fine-fleece Wool.

ALSO—

Twenty bales fine-fleece Wool
Three bales Locks
Two bales in the Grease.

Terms at sale. 447

FRIDAY, JAN. 10, AT 11 O'CLOCK.

FORTY-THREE BALES WOOL.

MR. SAMUEL LYONS will sell by public auction, at his Mart, corner of George-street and Charlotte-place, THIS DAY, 10TH JANUARY, At Eleven o'clock,

IN THE INSOLVENT ESTATE OF CHARLES COXEN,

By Order of the Official Assignee.

Thirty-one bales of Fine Fleece Wool

IN THE ESTATE OF R. DACRE,

By Order of the Trustees.

Twelve bales Fine Fleece Wool

Terms at sale. 413

FRIDAY, 10TH INSTANT, AT 11.

TO SADDLERS AND OTHERS.

MR. SAMUEL LYONS will sell by auction, at his Mart, corner of George-street and Charlotte-place, THIS DAY, THE 10TH INSTANT, At Eleven o'clock,

Three cases, containing carriage, gig, jockey, and hunting whips, assorted
Six cases, containing gentlemen's saddles and bridles, horse clothing, stall collars, horse and water brushes, tandem harness, &c., &c.
One case gig harness, brass mounted and covered
One case, 20 gross whip lashes.

Terms at sale. 414

Friday, 10th January, 11 o'clock.

TO SADDLERS AND OTHERS.

LONDON SADDLE-TREES, GIG FURNITURE, &C., &C.

MR. SAMUEL LYONS will sell by auction, at his Mart, corner of George-street and Charlotte-place, THIS DAY, THE 10TH JANUARY, At eleven o'clock,

An assortment of—

Prime London saddle-trees, brass gig and tilbury furniture, harness buckles, saddle nails, martingale rings, bridles, girth and other buckles, stirrups, snaffles, web, and a variety of other articles.

Terms at sale. 485

UNRESERVED SALE OF GENUINE CHOICE WINES.

DAVIDSON AND RUDD have received instructions to sell by auction, at their Rooms, No. 18, Charlotte-place, THIS DAY, THE 10TH INSTANT, At Twelve o'clock precisely,

A choice selection of recherché Wines, being the original genuine importation, and bearing the well-known brand of "Edwin Bryant, London," positively without the least reserve:—

Hogsheads and Quarter casks } fine, mellow, rich old Port
One hundred and twenty dozen most superior gold coloured Sherry
Thirty dozen "Bryant's" highly approved fine pale Sherry
Fifty dozen superior old Port

ALSO,

Six cases, 3 dozen each, St. Julien Medoc
Six cases, 2 dozen each, Claret
Three cases, 6 dozen each, most superior Claret
Three boxes Champagne
Hogsheads Claret
One hundred dozen fine bottled Sherry.
A quantity of London bottled ale
Two baskets champagne

Terms at sale. 138

EXTENSIVE SALE OF PORT, SHERRY, CHAMPAGNE, BRANDY, GIN, &c

DAVIDSON AND RUDD will sell by Auction, at their Rooms, No. 18, Charlotte-place, THIS DAY, THE 10TH JANUARY, 1845, At twelve o'clock precisely,

Fifty cases three dozen each fine rich full bodied port wine, bottled in Oporto, and imported genuine per *Gilbert Jamieson*
Fifty cases pale brandy, put up expressly for private use, and of first rate quality
Sixty dozen sherry
Ten cases three dozen each sherry
Ten cases three dozen each port
Forty dozen superior champagne
One hundred dozen sherry
Eight hogsheads gin

Terms at sale. 555

FRIDAY EVENING REGULAR BOOK SALE.

THE LAST OF THE EXTENSIVE INVOICE.

MR. W. G. MOORE intends selling THIS EVENING, at his Mart, Pitt-street,

The remainder of the BOOKS from last Friday's sale, comprising—
A number of very useful and interesting books
A variety of engravings, stationery, &c.

All on view at the Mart. 563

ELEGANT HOUSEHOLD FURNITURE, PICTURES, BOOKS, &c.,

The property of a gentleman leaving the Colony.

MR. MORT will sell by public auction, at his Rooms, George-street, on THIS DAY, 10TH JANUARY, At Eleven o'clock,

One very handsome bookcase
One ,, ,, wardrobe
One ,, ,, sideboard, with carved back
Two horse-hair sofas to match
One sideboard
One bookcase
One child's cot
One secretaire
One eight-day hall clock, by "Peterkin," London

ALSO,

At Twelve o'clock,

The following choice Works:—

Twenty-three vols. Baxter's Works, one vol. Byron's Works
Two vols. M'Garvie's Sermons, two vols. Exile of Erin
Eleven vols. Scott's prose Works, forty-four vols. Scott's poetical ditto
Two vols. Mary Queen Scots, six vols. Milton's poetical Works, two vols. Harvey's Works, one vol Tegg's Dictionary of Chronology, four vols. Franklin's Works, one Mason's Spiritual Treasury, one vol. Baxter's Dying Thoughts, one vol. Tarquin the Proud, two vols. Beveridge's Private Thoughts
One fine engraving Queen Victoria
One ditto ditto Tight Shoe
One ditto ditto Landing Mary Queen Scots; proof before the letters
One Oil Painting, Leap Frog
One ditto ditto, Dancing Doll
One exquisite painting in water colours, Bay Naples.

Terms—Cash. 579

UNRESERVED SALE OF SUNDRIES

MR. MORT will sell by public auction, at his Rooms, George street, on THIS DAY, 10TH JANUARY, At Eleven o'clock,

2 quarter casks vinegar, 1 bag coffee, 4 boxes window glass, 1 case bitters, 7 kegs colonial tobacco, 1 cask whiting, 17 bundles rod iron, 2 bags horse nails, 2 casks beef, 1 barrel cement, 4 puncheons peas and beans, 2 dozen hay knives, 1 cask potash, 54 kegs yellow paint, 1 cask flints, 1 bag sago, 2 copper boilers, 1 cask sulphur, 1 cask oatmeal, &c., &c

With a great variety of sundries, the whole of which will be sold without the least reserve.

Terms—Cash. 578

34 BALES FINE WASHED WOOL,

BY

MR. MORT,

AT HIS ROOMS,

SATURDAY, 11TH JANUARY,

AT TWELVE O'CLOCK. 575

POSITIVE SALE

OF

BANK OF NEW SOUTH WALES SHARES. WITHOUT ANY RESERVE.

MR. MORT will sell by public auction, at his Rooms, George-street, on SATURDAY, 11TH JANUARY, At Twelve o'clock precisely,

23 Shares in the Bank of New South Wales, £50 each
24 Ditto ditto ditto £10 each

47 Shares.

The above will be sold without any reserve, for cash. 576

HUNTER RIVER STEAM NAVIGATION COMPANY'S SHARES.

(Undoubtedly the best investment in the colony.)

MR. MORT will sell by public auction, at his Rooms, George-street, ON SATURDAY, 11TH INSTANT, At Twelve o'clock, Immediately after the Bank of New South Wales Shares,

Thirty Shares in that truly flourishing establishment the Hunter River Steam Navigation Company.

☞ Whoever will take the trouble to enquire into the position of the above Company, will find that its property is *bona fide* its own, not being a shilling in debt—that its management is equal to that of any establishment in the country, and its dividends greater than those of any other institution in the place.

As an investment it stands unrivalled, and some of the most cautious capitalists in the city have recently purchased largely into it. 577

MILCH COWS AND SIX SUPERIOR HEIFERS.

MR. BLACKMAN will sell by auction, at the New Cattle Market, on SATURDAY, THE 11TH INSTANT, At Eleven o'clock precisely,

Cows, Calves, and Heifers, in lots to suit purchasers.

Terms, cash. 410

NOTICE OF SALE "POSTPONED."

THE Sale of the late Sir James Dowling's LAW LIBRARY will be resumed

By MR. STUBBS,
At his Rooms,
THIS DAY, 10TH OF JANUARY,
At two o'clock P.M.,

When the residue and most important portion will positively be sold, without any reservation. 37

TO CONTRACTORS, BUILDERS, AND TIMBER MERCHANTS.

COWRIE PINE BOARDS.

MR. STUBBS will sell by public auction, at the Mart, King-street, on SATURDAY, 11th JANUARY, 1845. Sale at eleven precisely,

THREE THOUSAND FEET of that very much prized, amongst builders, COWRIE RIVER PINE BOARDS, from New Zealand—16, 18, and 20 feet long, 9 inches broad, and 1 and 2 inches thick.

Terms, cash. 539

☞ *This delightful COTTAGE will POSITIVELY be SOLD, without reserve, on SATURDAY, the 11th January, 1845.*

A SNUG HOUSE FOR A SMALL FAMILY,

AND "CHEAP."

IN JOHN-STREET, STRAWBERRY HILL.

25 feet frontage, by 43 depth, more or less.

MR. STUBBS is instructed to sell by public auction, at the Mart, King-street, on SATURDAY, THE 11TH JANUARY, 1845, Sale at 12 o'clock precisely,

All that desirable weatherboard built dwelling-house and premises, containing two rooms on the ground floor and one above, with double chimney for continuing another house. There is a well of water, and has been lately let at the capital good interest of 6s. 6d. a week.

Terms—Cash. 540

CONTINUATION OF TUESDAY'S SALE.

JOHN G. COHEN will sell by auction, at his New Rooms, THIS DAY, 10TH JANUARY, At 11 o'clock precisely,

A number of lots remaining unsold—
One case de laines
One case hosiery, assorted
Fifteen pieces broadcloth
One case artificial flowers
Two bales grey calicos
Twenty-five pieces Marcella waistcoatings

ALSO,

Fifteen kegs colonial tobacco

Terms—Cash. 560

WOMEN'S LASTING AND SPANISH LEATHER SHOES, CHILDREN'S SHOES, LADIES' SIDE LACE BOOTS, SLIPPERS, MEN'S BOOTS AND SHOES.

JOHN G. COHEN will sell by Auction, at his new rooms, 490, George-street, THIS DAY, THE 10TH JANUARY, At eleven o'clock precisely, WITHOUT RESERVE,

Nine trunks women's lasting and Spanish leather shoes, ladies' side lace boots and slippers, children's shoes, men's shoes and boots, &c.

Terms, cash. 560

HORIZONTAL GRAND PIANO, SIDEBOARD TABLE, &c.

JOHN G. COHEN will sell by auction, at his new rooms, 490, George-street, two doors south of Hunter-street, THIS DAY, THE 10TH JANUARY, At eleven o'clock precisely,

1 Horizontal grand pianoforte
1 Sideboard
1 Table
1 Press, &c., &c.

Terms, cash. 531

UNRESERVED SALE.

THIRTY-TWO CRATES USEFUL EARTHENWARE.

Just Landed, ex *Sarah Birkett.*

TO BUYERS FROM THE NEIGHBOURING COLONIES, EARTHENWARE DEALERS, COUNTRY STOREKEEPERS AND OTHERS.

JOHN G. COHEN has received instructions from the importers, MESSRS. ROWAND, M'NAB, AND CO., to sell by Auction, at his New Rooms, 490, George street, ON TUESDAY NEXT, JANUARY 14, 1845, At eleven o'clock precisely.

The following Goods, ex *Sarah Birkett*,

Thirteen crates blue, green, and brown breakfast bowls and saucers
Three crates willow dinner and cheese plates
One crate willow dishes
One crate willow cover dishes
One crate chambers, blue
Two crates ewers and basins, blue
Eight crates assorted, consisting of cups, saucers, jugs, bowls, tea pots, ewers, basins, plates, dishes, &c.
Two crates dinner sets
One crate bidet, bed, and chair pans.

Terms, Cash.

The Auctioneer begs to call the particular attention of the Trade, Country Storekeepers, &c., to the above assortment of Earthenware, the whole being expressly imported for this market. 562

EXTENSIVE SALE

OF WINES, BRANDY, ALE, PORTER, &C.

MR. GEORGE A. LLOYD will submit to public competion, at his Rooms, Lower George-street, on MONDAY, 13TH INSTANT, At Twelve o'clock precisely,

25 quarter-casks superior sherry
10 quarter-casks full flavoured port
5 hogsheads first-class sherry
5 butts sherry
2 butts port
7 octaves sherry, shipped by J. L. WARDELL and Co.
20 cases, each 3 dozen, port wine, a fine sample
30 cases, each 3 dozen, London bottled port
18 cases, each 1 dozen, WARDELL's port
5 cases Kislingbury's port
5 cases Swayne's sherry
20 cases claret
2 cases sauterne
10 cases French brandy
3 cases Geneva
20 casks, each 3 dozen, London bottled ale
20 casks, each 3 dozen, London bottled stout

Any gentleman wishing to lay in a stock of choice wines, will have an opportunity of doing so at this sale, such as may not occur again for some time.

Terms at sale. 569

AT THE RISK OF THE FORMER PURCHASERS.

MR. GEORGE A. LLOYD will sell by auction, at his Rooms, Lower George-street, on MONDAY, 13TH JANUARY, At 11 o'clock precisely,

At the risk of the former purchasers.

Six casks Canary seed
Three casks arsenic
Five superfine blue cloth jackets
Twelve Valentia vests
Twenty-two pairs drab moleskin trowsers
One jar chloride of lime.

Terms—Cash. 567

TO GROCERS, DRUGGISTS, GENERAL DEALERS, AND OTHERS.

MR. GEORGE A. LLOYD will sell by auction, at his Rooms, Lower George-street, two doors from the *Herald* Office, on MONDAY, 13TH INSTANT, At eleven o'clock precisely,

5 Cases, each 3 dozen quarts, salad oil
10 Bags sanfoin seed
5 Barrels Patras currants
10 Cases bottled fruits, well assorted
15 Chests tea, (hysonskin)
2 Casks ginger
10,000 4a Manila cigars, very superior
1 Box isinglass
5 Carboys sulphuric acid
1 Cask oxalic acid
2 Casks linseed
1 Cask sal ammoniac
5 Bottles quicksilver
1 Cask Rochelle salts

With a variety of other articles too numerous to mention.

Terms at sale. 569

IN THE SUPREME COURT.

Sheriff's Office, Sydney, 9th January, 1845.

Taylor v Donaldson.

ON MONDAY, the 13th instant, at noon, at the residence of defendant, Kissing Point, the Sheriff will cause to be sold, a quantity of household furniture, a horse, cart, dray, cow and calf, &c.,—unless this execution is previously satisfied.

CORNELIUS PROUT,
541 Under Sheriff.

IN THE SUPREME COURT.

Sheriff's Office, Sydney, January 9, 1845.

Welsh v. Elyard.

ON TUESDAY, the 14th instant, at noon, at the London Tavern, Sydney, the Sheriff will cause to be sold, all the right, title, interest, and estate of the above defendant, in and to that piece or parcel of land, said to contain about 1000 acres, and known as the property of the defendant, situate at or near the village of Picton, and now in possession of Mr. Abercrombie, adjoining the Abbotsford Estate and Mr. Edghill's farm,—unless this execution is previously satisfied.

CORNELIUS PROUT,
542 Under Sheriff.

LAW INTELLIGENCE.

SUPREME COURT.—EQUITY JURISDICTION.

TUESDAY.

BEFORE Mr. Justice A'BECKETT.

GRAHAM v. BARKER AND ANOTHER.

This was a bill filed by Robert Graham against Thomas Barker and James Norton. The case came on for argument upon demurrer, in the latter end of November last, the Solicitor-General, Mr. Foster, and Mr. Broadhurst, appearing for the plaintiff, and Mr. Donnelly, Mr. Fisher, and Mr. Lowe, for the defendants. The facts of the case, as they appeared on the bill, were as follows:—

In the early part of the year 1840, the defendant Barker being then on a visit from this colony, at Edinburgh, became acquainted with the plaintiff, and in the course of various conversations with him, spoke in such favourable terms of the state of the colony, and of the large and safe returns to be procured there by the investment of capital, that the plaintiff was induced to, and did eventually, entrust to the hands of the defendant, a sum of £10,000 to be disposed of in the manner hereinafter mentioned. A correspondence took place in Edinburgh between the plaintiff and Mr. Barker, in the course of which the latter recommended Messrs. Edwards and Hunter, merchants in Sydney, as agents for the investment of the plaintiff's money; but, in consequence of some suggestions (made it would seem by the plaintiff's legal adviser, though by whom it is not very clear), that Messrs. Edwards and Hunter were *persons in business*, it was proposed by Mr. Barker that he himself, in conjunction with Mr. Norton, the other defendant, should become responsible for the management of the plaintiff's capital. This proposal was made by letter, and appears to have been in reply to one from the plaintiff to Mr. Barker, in which the former had requested the latter to be *custodier* of the plaintiff's mortgages and other deeds, and securities. The material part of the letter is as follows,—"I think it an excellent "arrangement that the deeds be left in my "hands, and shall most cheerfully perform the "duty of custodier. There is no hurry for the "power of attorney, when David comes up, he "can bring it. I almost could wish one minute "with you about 10 o'clock: for although I am "still as confident as before in Edwards and "Hunter, yet, when your man of business says "'they are persons in business,' which is true, "and when I look at your very large and fine "family, and that as you say it were your all "for them, I am almost tempted to allow myself "to be put in nomination for your approval; "but in case of my death, it would be desirable "to have another, and my brother is also in "business, therefore I must object to him on "same grounds. I will, if you like, become "your agent, with my solicitor, Mr. James "Norton, jointly; he will manage the business, and I shall be with him responsible; "he is a most excellent person, the very first "solicitor in the colony, and I feel myself "quite safe with him. Pray think of this and "call for me if you can; I am much hurried, "and hope you can read what I have tried to "convey."

In accordance with the suggestions in this letter, the plaintiff agreed to entrust to the care of the defendants the sum before mentioned, to be lent on mortgages, under their care, direction, and management, as his agent, and to allow them for such agency, a commission of five per cent. upon all moneys thereafter to be received for, and remitted to the plaintiff, as interest upon the loans to be effected by them. In furtherance of this arrangement, a letter of credit for £10,000, in favour of the defendant, upon the Commercial Bank of Sydney, was handed over to Mr. Barker, together with a power of attorney, and a letter of instructions specifying the terms upon which the money was to be invested; this letter is dated London, 30th April, 1840; and, after referring to the letter of credit, and the power of attorney before mentioned, thus adverts to the investment of the money: "In lending out my money, of "course you will invest in my name, and "although my object in sending my money to "the colony is to obtain a high rate of interest, "yet, you will have the goodness to observe, "that perfectly unobjectionable securities must "be your paramount object in making the investments, even at a certain sacrifice of "interest, if necessary. I am advised that "your best method is to lend upon mortgages, "taking with them a warrant of attorney to "foreclose." Various conversations also took place between the plaintiff and Mr. Barker, in all of which it was understood between them, that the obtaining of perfectly unexceptionable securities should be regarded as the paramount object to be kept in view by the defendants, and that the rate of interest to be procured should be of secondary consideration. The letter of credit, together with the power of attorney and letter of instructions, were acknowledged by Mr. Barker in a letter of the 30th April, 1840, and in a few days afterwards, he set sail for Sydney, where he arrived on the 19th September in the same year. In the course of the conversations on the subject of the investment, Mr. Barker was informed by the plaintiff, that the sum with which he was entrusted was almost the entire amount of provision which the plaintiff had acquired for the support of his family; and this fact was dwelt upon by the plaintiff as one reason for investing his money with the greatest caution, and of regarding unquestionable security as of far superior importance to a high rate of interest.

Previous to Mr. Barker's leaving Sydney for Scotland, he had been engaged in the business of a miller; but, it was alleged, had left his mills in the possession of his brother, Mr. James Barker, who carried on the business in partnership with Mr. Ambrose Hallen. What was the exact nature of Mr. Thomas Barker's connection with the firm, I do not clearly collect; but, it is alleged, that he had pecuniary and other transactions with them; and that on his arrival here, he found them largely indebted to him, and in great pecuniary embarrassment; a fact, which it is alleged, he had also heard of on his way out, when touching at Rio. Mr. Norton, having been acquainted with his appointment, and the instructions under which he was to act, accepted the agency, and the defendants, having cashed the letter of credit, proceeded to the immediate investment of the money. The whole amount was disposed of in two loans of £6000, and £4000; the former to Mr. James Barker, and the latter to Mr. Edward Sparke, a client of Mr. Norton. The loans were advanced on the security of freehold estates; but which, it is alleged, were of grossly inadequate value, and both the borrowers were said to be in insolvent circumstances, to the knowledge of the defendants at the time of the advance. The money was advanced within three weeks of Mr. Thomas Barker's arrival in the colony; Mr. James Barker and his partner Hallen were declared insolvent about about two months afterwards, viz., on the 11th November, 1840, and Mr. Sparke on the 14th January, 1841. Previously to the insolvency of Barker, the partnership between him and Hallen was dissolved at the instance of Mr. Thomas Barker, and the loan of £6000 had also been advanced. Of both investments, the defendant Barker informed the plaintiff, by letter of the 4th October, 1840, in the course of which he says:—

"With regard to the investment of the "money, we have lent £6000, 11 per cent., for "5 years, upon a property of my brother's, on "land at more than double the amount; this "estate contained originally 4000 acres of "land, situated on the banks of the River "Hunter, about thirty miles from Maitland, but "shortly before my arrival, about one-fourth of "it was sold, which realised £8000. The residue, about 3000 acres, is the best part of "the estate, containing the improvements, and "has at this moment 350 acres of growing "wheat. My brother, who since my arrival "dissolved partnership with Mr. Hallen, and "took the whole business himself, required the "sum of £10,000, but we have lent only £6000 "of your money, and I have advanced £4000 "myself upon a second mortgage, so that before I can receive either principal or interest, "you will and must be paid."

On the 12th January, 1841, the defendant Barker wrote to plaintiff, announcing the completion of the mortgage to Sparke, for two years, at 12½ per cent., in which letter, after speaking of the wonderful increase in the value of land during his absence from the colony, he writes as follows:—

"My brother, who I left in possession of my mills and the business, complained, on my return, of the inactivity and expensive habits of his partner, of whom, however, he soon got rid after my arrival. The money market was in a disordered state, and he pressed me to advance him some, and offered an Estate he had on the Hunter River of 3000 acres as security: seeing it was unincumbered and of sufficient value, I did not hesitate to lend him some of your money, as I informed you, at 11 per cent., and subsequently I advanced £5000, being £1000 more than I had intended. For this £5000 I have taken a second mortgage: both your money and my own are well and safely secured, indeed, as I before told you, I have no claim until your money is paid off in full; yet had I known the exact position of my brother's affairs, I would not have advanced one sixpence of either your money, or my own; for there is no doubt it will shortly be paid off by the trustees, and I shall have to look for a new investment; not that I doubt finding abundance of offers for it, yet the changing so soon, and the cause of it, I feared would give you some uneasiness; I assure you again that nothing can be more secure than your money at this moment, and indeed, situate as you are, and receiving it from you as I did, I consider the trust so sacred, that I shall always feel myself and property amenable to you and your family for the amount."

In April, 1841, a remittance of £533 10s. was made to the plaintiff on account of the half year's interest, due on the two mortgages: no other regular payments were made; but the defendant Barker, out of his own funds, remitted several sums to the plaintiff on account of the interest. Several other letters were sent to the plaintiff, in which the defendant Barker regrets the depreciation of plaintiff's securities, and repeats his own readiness to be responsible for any loss which the plaintiff might incur.

Both mortgages having become greatly in arrear, they were ultimately put up for sale, Sparke's on the 5th May, 1842, being purchased by defendants for £4010, and Barker's, (the Castle Forbes Estate) on the 12th July, in the same year, for £3000, being bought in at that price, as the bill states, "by or on behalf of the defendants, or purchased by the defendant Thomas Barker." On the 14th of October, in the same year, the defendant Barker wrote to the plaintiff in reference to the above sales as follows. "With "regard to my brother's estate, I put it up at "£3000, and there was not a single bidder; I "therefore bought it in, and have decided upon "holding it for a few years, hoping by a re-sale "to realize your £6000, even should I lose my "£5000. I am now endeavouring to let it. Supposing I do not re-sell the estate for more than "£3000, I must lose £8000 by this one transaction. With regard to the £6000 lent to "my brother, I propose to give a mortgage on "the Castle Forbes Estate, and to secure you "further, by my own personal bond to repay "the same in four years from the day of sale, "paying on the interest at the rate of 5 per "cent. I mention at the rate of 5 per cent. in "consequence of the exceeding heavy loss I "sustain, not only in my brother's failure, but "also in paying you interest on the £4000 lent "Mr. Sparke, and by my determination to "make up your £6000 lent on Castle Forbes. "I shall continue to remit you the interest on "the £6000."

The estate of Barker and Hallen paid a dividend of six shillings in the pound, out of which the defendants received on account of the plaintiff £900, being the amount of the dividend on the £3000, the remainder of the £6000 being met by the sale of the mortgage. No part of this sum was remitted to the plaintiff, but an account was rendered to him, in which that sum was included, and in which account the plaintiff was made to be indebted to the defendants, in the matter of their agency, in the sum of £232 10s. 8d. This account appears to have been sent to the plaintiff in a letter on the 14th October, 1842; and on the 4th March, 1843, the defendant Barker again wrote to the plaintiff, desiring to be relieved of the management of plaintiff's affairs, and at the same time stating that he had, in accordance with his previous offer, executed a bond in favour of the plaintiff, to ensure him the payment of interest at 5 per cent. on £6000, and the principal at the period of four years, should the estate of Castle Forbes not realise the money. Several letters, in answer to those sent by Mr. Barker, were received from the plaintiff, who declined to have anything to do with the purchase of the estates, or to accept Mr. Barker's bond, but insisted that the £10,000 should be secured to him by a mortgage over Mr. Barker's own estate. The date of the plaintiff's last letter is the 20th October, 1843, and in it he desires Mr. Barker to hand over to his son Robert the securities on Castle Forbes and Sparke's properties; observing that he required his son Robert to act, in compliance with the defendant's wish to be relieved of the management of his affairs, expressed in his letter of the 4th of March, 1843.

These are the main facts of the case, as they appear on the stating part of the bill, which concludes with an allegation that the plaintiff has, "through the negligence and misconduct of the defendants as his agent, lost the whole of his principal money, and some arrear of interest, unless this Court should grant him relief."

The bill contains a variety of charges, which I shall allude to more particularly when I come to consider their effect; and concludes with a prayer for relief, of certainly a somewhat novel character, but which I do not say, is to stand in the way of the plaintiff, if I should be of opinion he is entitled to any relief consistently with the case made by his bill. His prayer is "that the defendants may be directed to pay to him the £900 received by them from Barker and Hallen's dividend—that the plaintiff's money may be declared to have been lent by the defendants without due and proper care, caution, diligence, and attention to the interests, and in fraud, of the plaintiff; that in addition to the said sum of £900 they may be decreed to pay sufficient to make up the sum of £10,000 with interest at the rates reserved in the respective mortgages (the plaintiff allowing all the sums mentioned to have been remitted to him or received by his agents since then)—that they may also pay up the arrears of interest on the said mortgages, and give to the plaintiff such security for his principal money, as might either alone, or together with the said two mortgaged estates, be a good and sufficient security for the plaintiff's money, and for the regular payment of interest thereon, and for the return of the said principal money, when and as the plaintiff shall require return thereof; and, that until the said defendants should have paid up the same, the said mortgaged premises should stand as a security."

The defendants have each put in a general demurrer to the bill, for want of equity; and also on the ground that there is no statement in the bill of the plaintiff's place of abode. The last objection may conveniently be disposed of first. The description of the plaintiff in the bill is "Robert Graham, Doctor of Medicine, and Professor of Botany, in the University of Edinburgh." It was argued that this was a sufficient description of the plaintiff's place of abode; but I think it is no description at all, and that it amounts at the most to a statement of the plaintiff's calling or *addition*. Assuming the objection to be a valid one, it was contended that it could not be taken advantage of by demurrer; but that the proper course was to apply to the Court that the plaintiff might give security for costs. This was said to be the modern practice, and undoubtedly it is so laid down in the different text books, on the authority chiefly of Sandys v. Long, 2 M. & K. 487. But although such a course might have been taken by the defendants here, it by no means follows that they are not entitled to demur. In Sandys v. Long, all that was decided was, that a defendant was not *bound* to plead or demur; the doubt which the Lord Chancellor had to get over in that case, was whether the defendant could take any other course. The authorities in favour of a demurrer were not disputed; the question was, whether there was not also authority for the defendants moving that the plaintiff should give security for costs—and the Chancellor thought that there was. Had a similar application been made to me in the present case, I might, probably, have acceded to it, but I am not the less bound to allow the demurrer, if there be no authority against it. On the contrary, all authority is in favour of such a course, and Rowley v. Eccles., 1 S. and St. 511, cited at the bar, is directly in point. In that case the defendant demurred on the ground taken here; but it was overruled upon argument. It was overruled, however, upon the merits, and not on the ground that a demurrer would not lie, for the defendant afterwards pleaded that the defendant did not reside at the place stated in the bill. This shows that the plaintiff had in fact stated his place, but not his true place, of residence in the bill, a defect which could not of course be taken advantage of by demurrer. Had no place been stated, as in the case here, the demurrer would not have been overruled. On principle, indeed, a demurrer appears to be the more proper course; on the simple ground that it is a deficiency apparent on the record, which, in Lord Redesdale's treatise, and all others upon the subject, is assigned as an express ground of demurrer. In page 463 of the 1st vol. of Dan. ch. pr., the alternative step of applying for security for costs is suggested; but the mode by demurrer is primarily pointed out, and from p. 45 of the 2nd vol., it is clear that a demurrer is considered by the author the legitimate course. At all events I can find no authority that it is not so, and having been adopted in the present instance, and upon adequate grounds, I am of opinion that, upon this point, the demurrer must be allowed.

Upon so technical a point, however, I should certainly not dismiss this bill; but it will, of course, be fruitless to give the plaintiff leave to amend, if I am against him, upon the other and more important portion of the demurrer. As to this, the defendants deny the equity of the plaintiff *in toto*, and the main ground upon which they have taken their stand is that the plaintiff's remedy is at law. As the bill is shaped, they contend that it is a bill for damages; that the relief sought is founded on a case, which amounts only to a charge of negligence—without fraud—or with fraud too vaguely and imperfectly charged—and not distinctly connected with the negligence complained of: Admitting, however, fraud to be sufficiently alleged, they contend that not being trustees, but only agents, and so treated by the bill, they are not amenable in a Court of Equity. They contend also that whatever statements may be relied on by the plaintiff as founding a claim to relief in Equity—these are nullified by other statements showing a case on which he may have a complete remedy at law—and that this duplicity may be taken advantage of by the defendants, on the ground that where alternative or inconsistent statements are put forth in a bill, the opposite party has a right to adopt those which are most against the interest of the party making them. The defendants also argued that the stating part of the bill alone must be considered as the plaintiff's case, and that any defects therein could not be supplied by reference to the charging part.

The plaintiff's counsel contended that the demurrer operating as an admission of the truth of all the facts alleged in the plaintiff's bill, the charging part could not be excluded—that fraud was sufficiently alleged for the purposes of entitling the plaintiff to an answer, and that at all events, a case of gross negligence was stated—which, as against a trustee, was sufficient. That there was, in principle, no distinction between an agency and a trust, for that wherever a reliance was placed on the conscience of the party, there Equity had jurisdiction—that the plaintiff was entitled to discovery, if not to relief—that although he might have a remedy at law, yet if he had it also in Equity, the Court would afford it him to do justice and avoid multiplicity of suits—that at all events the bill was sustainable against the defendants as accounting parties—and that if relief could be given them on this or any other head, consistently with the case made by the bill, although not specifically prayed, the demurrer could not stand.

The diligence of the learned counsel who argued the various points supplied me with a variety of cases, which left little to be added on either side; I will first advert to those which have reference to the distinction which it was contended should be made between the stating and charging parts of the bill. The case relied on by the defendants was that of Flint v. Field, 2 Anstr., 543, in the marginal note of which it is laid down, that "the plaintiff's equity must appear in the stating part of the bill." The case itself is stated in almost as few words as the note, but the doctrine to be gathered from that decision appears to me to be accurately deduced in the case cited by the counsel for the plaintiff of Houghton v. Reynolds, 2 Hare, 264. There the Vice Chancellor said, "I do not impeach the decision in Anstruther; but that case is not an authority for the proposition, that a fact introduced by way of charge in the bill is not as well pleaded as if it were introduced in the shape of what is technically called a statement; it merely decides that an allegation, that the defendant sets up certain pretences, followed by a charge that the contrary of such pretences is the truth, is not of itself an allegation or averment of the facts which make up the counter-statement. I have no doubt that such a form of pleading—not specifically averring the facts themselves, would be defective; but there is no rule that every material fact must precede what is termed the charging part of the bill."

It should be observed that in Flint v. Field the whole equity of the plaintiff's case consisted in the pretences, and charges to the contrary; which latter not operating as specific averments of the necessary facts, the bill was altogether without equity. It is hardly an authority for saying that the plaintiff's equity must appear in the stating part of the bill, but rather that if the equity appears only in the charging part, the facts which are to raise that equity, *must be there stated affirmatively*, and not merely by denial of the truth of the defendant's pretences to the contrary. But in the charging part of the present bill, there is not only a general denial of the alleged pretences, but distinct averments of facts in support of that denial, and of the case made by the bill; and these facts, however material, the case just cited is an authority for saying, need not appear in the stating part of the bill. What the case made by the bill in conjunction with the charges in support of it, will amount to, is the *substantial* question raised by the demurrer; but I am now simply considering whether the charging part of the plaintiff's bill must be taken as part of his case—and I think that it must. Whether that case will entitle him to relief is another question, and which, having determined what are the facts to be considered, I now proceed to inquire.

The object of this bill is to make the defendants responsible for a breach of trust; with that view the prayer is framed, and to that end the allegations and charges are adapted. If the ground for relief on this head fails, I confess I see no other: for it is in vain to say that this is a bill for an account. In the first place no account is prayed; and if it were, no ground is laid for such a prayer. There is no doubt that every principal has a right to an account from his agent, and that, in general, a bill will lie for that purpose, but the bill must be appropriately framed. The cases cited at the bar, of Frietas v. Santos, 1 Y. and J. 376—King v. Rossett, 2 Y. and J. 34—and Darthez v. Lee, 2 Y. and C. 10, show that the mere relation of principal and agent will not justify a bill for an account. The grounds of the principal's coming into Court for relief must be stated; and these grounds, generally, are—"either if the opposite party refuses to account, or there is a difficulty in taking the account, or some discovery is necessary before the account can be taken." Nothing of the sort is alleged here. So far, indeed, from its being stated that the defendants have not accounted, or have delivered false or incorrect accounts, or have refused or declined to account, it appears from the plaintiff's own statement that they *have* accounted, and for anything that is stated to the contrary, accounted satisfactorily. No sums are alleged to have been received by them since the time of furnishing the account, in which they bring in the plaintiff as their debtor; after which period the agency was transferred to the hands of another party. In acknowledging the receipt of this account, the plaintiff makes no objection to it, nor does he now seek to impeach any of the items. But the bill is evidently not framed with a view to an account: for independently of more substantial omissions, there is not even the usual allegation of unsettled accounts, or of applications to the defendants, or that anything will appear to be due to the plaintiff if an account is taken; on the contrary, the applications stated to have been made to the defendants, are not to account; but, in accordance with the relief asked by the prayer, "to invest and indemnify." It is part of the prayer, indeed, that the defendants may pay over the £900 received by them from Barker and Hallen's estate—but that is not on the footing of an item due in the way of account, but as part of the relief asked for against them—on the footing of their responsibility for breach of trust. As matter of account it is included in the account furnished to the plaintiff—and that shows a balance in favour of the defendants. How, then, until that account is impeached, can I deal with this £900 as an item to be paid over to the plaintiff; or why am I to infer the balance made out in favour of the defendants to be incorrect, when the plaintiff himself does not allege so; but rather states that from which the contrary may be inferred?

It was argued, however, that independent of the question of account, a principal had a right to ask for any information from his agent, by way of discovery, and the Solicitor-General, in support of this view, relied much on a passage in Mackenzie v. Johnson, 4 Mad. 376, where the Vice Chancellor says, "the plaintiff can only learn from the discovery of the defendants how they have acted in the execution of their agency; and it would be most unreasonable that he should pay them for that discovery, if it turned out that they had abused his confidence; yet such must be the case, if a bill for relief will not lie." The case in which this observation occurs *was* for an account, and a proper case having been made out for discovery as to that account, the Vice Chancellor held that the plaintiff was also entitled to relief. As to any other information which a principal may require from his agent, touching his actings in the execution of his agency, equity is undoubtedly open to him for the purposes of discovery, and of relief too, where the relief is incidental to that discovery, and of the kind that can be administered in Equity, although the same might be had also at law. The class of cases establishing this, of which Ryle v. Haggie, 1 J. & W. 234, is the principal one, is recognised in Pearse v. Creswick, 2 Hare, 286; although it was there observed that the necessity of coming into Equity for discovery does not *necessarily* carry with it the right of relief. But admitting the general right of a principal to discovery and consequential relief, if, being entitled to discovery alone, he also prays relief, a demurrer to the relief will be also a bar to the discovery. This is now too clearly established for any doubt upon the subject, although the contrary was once held in Fry v. Penn, 2 Br. 280, a case repugnant to law and practice, and which has been uniformly overruled. If in the present case, therefore, the plaintiff is disentitled to relief, he cannot escape the consequences of the demurrer, by setting up his right to discovery, on the ground of its being sought by a principal from his agent.

This brings me to the substantial question whether the relief prayed is demurrable, or rather whether any relief can be given, consistently with the case made by the bill? The case was argued on two grounds,—negligence, and fraud; and the answer given to the first was, that the remedy was at law. Assuming, for the present, fraud to be out of the question, it appears to me that the remedy would be solely at law—and I agree with Mr. Lowe that there are numerous charges in this bill, from which a declaration in assumpsit for negligence might be framed against these defendants. That upon the facts stated in this bill such an action would lie, (if authority were wanted for the proposition) is clear from the case of Whitehead v. Howard, 2 Bro. and Bin. 372. In order, however, to escape from being driven to law, it was contended for the plaintiff, that the defendants were to be looked upon as trustees, and that in that character they could be made liable in Equity for neglect of duty—as well as at law.

It was contended that there was no difference in principle between an agent and a trustee, and that the defendants in the present case are as much amenable to Equity jurisdiction, in respect of the duty undertaken by them, as if that duty had been created by will, or had under any other instrument been made the subject of express trust. It was said, also, that it was immaterial whether the defendants were styled agents or trustees in the bill, or whether the transaction in respect of which they were sought to be made liable was termed an agency or a trust. As to this, undoubtedly if the Court sees that the case made by the bill warrants the imputation of the character sought to be established against the defendants, it will not shut its eyes to that fact, because the appropriate term for that character may not always have been applied. No objection, therefore, of this nature will prevent me from dealing with these defendants as trustees, if they appear to me to be so, from the case made by the bill. But I cannot adopt it as an unqualified proposition, that there is no distinction in Equity between an agent and a trustee. For some purposes, indeed, they stand on the same footing—as to discovery, there is little, if any, difference between them; and in some cases, as before mentioned, that discovery will be followed by relief; but I am yet to learn that every case for relief against a trustee will be a case for relief against an agent. The ground of interposition of Courts of Equity in cases of trust, is undoubtedly a confidence reposed by one party in the conscience of another; but if this definition were to be literally followed, there is hardly any transaction in life in which one man trusts another,—no contract in which the exercise of skill or integrity is expected or pledged—that might not be construed to be a trust. The case of a solicitor was suggested by Mr. Lowe—take too that of a surgeon or physician—one can hardly conceive characters inviting deeper confidence, or requiring greater conscientiousness,—yet if the one be misplaced, or the other violated, there is no pretence for coming to a Court of Equity. Something more then than mere confidence in the integrity of another for the performance of a duty must exist in a transaction which is made the subject of an appeal for relief to a Court of Equity, on the ground of a breach of trust,—and that something appears to me to be *the absence of a remedy at law*. Let it be borne in mind that I am now speaking of a breach of faith in regard to the manner of executing the supposed duty—and not to those breaches which arise by a party's taking *undue advantage* of the confidence reposed in him for the performance of that duty, to *benefit himself*. The latter kind of breaches are in Equity considered as fraud, and for any such breach an agent would be equally liable as a trustee; in other words, to the extent of the benefit improperly derived by him through the confidence reposed in him, he would become, and be declared, a trustee for his principal. But to place an agent in that position fraud is necessary—gross negligence, though it would suffice against a trustee, is not sufficient against *him*. In the present case it is insisted that the defendants are trustees, and therefore gross negligence is all that need be charged against them,—but to call them trustees, and thus avoid the necessity of proving fraud, is a begging of the question, since, in my view of the case, *until* they are fixed with fraud, they cannot be considered as trustees in the sense in which that word is ordinarily understood in a Court of Equity.

That it is of the essence of a trust, to be exclusively the subject of Equitable Jurisdiction, is obvious from the use of the word itself; which implies not *obligation*, but *confidence*: when obligation exists, the law is sufficient to compel performance, or give redress for non-performance, or malperformance; but where confidence is the ground of the duty, and the conscience alone is consequently bound then Equity is the appropriate and only remedy. It is a good test then of the character of a party sought to be dealt with as a trustee, to see whether the matter in respect of which he is charged, is capable of affording a remedy at law. In almost every case where relief has been given against a party as trustee, (with the exception of that acknowledged class of cases in which concurrent jurisdiction may be exercised), it will be found that no remedy could have been had at law. Authority is hardly necessary to prove the proposition; but among other dicta of a similar description to be found in the cases, is one of Lord Hardwicke's, in Sturt v. Mellish, 2 Atk. 612, in which he says:—"A trust is when there is such a confidence "between parties that no action at law will lie; "but it is a case merely for the consideration "of Equity"—which imports, if it means anything, that where an action at law will lie, it is not a case for the consideration of a Court of Equity. The cases cited then to show that relief has been given against acts of negligence in trustees, similar to those charged against these defendants, do not apply—for in all of them the parties were trustees by their very situation, or had become so by their own acts, and were not amenable at law; or, if they were, the case fell within that admitted class, in which a Court of Equity exercises concurrent jurisdiction. But the negligence complained of here, is the negligence of a paid agent, which is very different from the characters filled by the respective defendants in the cases I allude to, among which I include the two so much relied on by the Solicitor-General of Massey v. Banner, 4 Mad. 413, and Langston v. Ollivant, Cooper 33.

Luke v. Bridges and Christy, Finch's Precedents 147, is a case not altogether dissimilar to this. There, a sum of £1000 belonging to the plaintiff, having been paid into the hands of the defendant's testator, with a request that he would put it out on security; he lent it on a pre-incumbered mortgage, and to a person in great difficulties, circumstances he might have discovered upon making the least inquiry. On a bill being filed against his executors to make good the money, it was dismissed, and the decree was affirmed upon appeal, on the ground that there was nothing to charge the defendants in Equity, although the Judge said he did not think the testator had done altogether what in natural justice he ought to have done; and it was in evidence that he himself had said he thought himself obliged in consequence to make the plaintiff satisfaction.

All that I have now been saying still leaves open the question of fraud—for a Court of Equity will not permit any person to take undue advantage of the confidence reposed in him by another, though that confidence may arise out of an obligation for the due performance of which the party is responsible at law. For this purpose principal and agent are looked upon in the same light as *cestui qui* trust and trustee. The main question then to be determined on this bill, as it now stands, is whether the defendants appear to have taken a fraudulent advantage of their position as agents to benefit themselves to the prejudice of the plaintiff their principal. It was contended, on the argument, that the relief claimed against them might be given on the ground of negligence only—and the bill would seem to have been framed under that impression, notwithstanding the interspersion of those charges which were relied on as allegations of fraud. Certainly in the stating part of the bill, with the exception of one passage expressive of the plaintiff's suspicion of fraud, the case of the plaintiff is confined to negligence. But in the event of this failing, his counsel relied on the case as one of fraud, and the facts averred as indicative of this, it was contended, need not appear in the stating part of the bill. So far I have already said, I go with the plaintiff; but if these facts appear only in the charging part, they must be stated not only affirmatively, but must be stated in such a manner as to distinctly convey the fraud intended to be imputed, and to be consistent with the other parts of his case, or there will be an end of his equity, as to that portion of it which requires fraud for its basis. Separating the charges of fraud, from those of negligence, for the purpose of ascertaining the effect of the former, let us see to what they amount. According to the construction put upon them by the plaintiff's counsel, they disclose a case of gross fraud—the imputation being nothing more or less than this—that the defendants have knowingly and designedly lent their principal's money on inadequate security, for the purpose of securing their own ends. Nothing short of this certainly—substantially short of it I mean, of course—will suffice. A case of fraud, however, such as this would undoubtedly be, must not be left to conjecture, or suspicion; and if nothing more than these are to be gathered from the bill, the imputation must fail. Of negligence, as I have already said, there is abundance of imputation, of the most unambiguous and direct kind; but this is not enough. The point which must, on this bill, be made out against the defendants is, that they lent their principal's money on grossly inadequate security, to benefit themselves; and for this purpose it will not be sufficient to show that *in point of fact* the security was inadequate, or that the money lent upon it did enure to their benefit—for the existence of these two facts is perfectly consistent with *bona fides* on their parts. There must be shown a connexion between the two—a relation between the end and attributed design—something more than suspicious coincidence—a clear case, in short, of fraudulent intent. Now, I must confess, after a very minute and careful consideration of all the plaintiff's statements, it does appear to me, that the charge of fraud is not made out.

In the first place it is not averred in any one part of the bill, that the defendants, at the time of taking the securities in question, *knew* them to be, or had information that they *were*, inadequate; on the contrary, the letters of Mr. Barker, which on this demurrer must be taken as much for him as against him, show the most implicit, and, for aught that appears, *bona fide* reliance on their sufficiency. But however this may be, the plaintiff has not charged them with knowledge of the contrary. The main allegations relied upon in proof of fraud—so far as relates to the larger advance are chiefly *these*—that the £6000 lent to Mr. James Barker, either directly or indirectly, came back into the pocket of Mr. Thomas Barker; that with this money or part of it, he was enabled to effect a dissolution of partnership between his brother and Mr. Hallen, and by these means to enable the former to carry on the business of a miller, for the benefit of Mr. Thomas Barker, either wholly or partially—that this business had been originally carried on by Thomas Barker, by whom James was left in charge of it, on Thomas's departure for England—that Thomas Barker was connected in pecuniary and other transactions with Barker and Hallen at the time of the above loan—that they were largely indebted to him, and were so during his stay in England—that they were in embarrassed circumstances, and known to Thomas Barker to be so, previously to his undertaking the agency of the plaintiff—and that he found them on the verge of insolvency on his arrival in Sydney; and, nevertheless, within a fortnight afterwards, advanced to the one of them £6000 of the plaintiff's money. As to the loan to Sparke, the charges are nearly similar, so far as regards the inadequacy of the security—the knowledge by the defendants of his insolvency—the haste and negligence in making the advance—and the benefit which they derived, or expected or intended directly or indirectly to derive, from it, other than their commission.

Now if these charges are attentively considered, it will be seen that they consist of nothing more than an allegation of the happening of certain events to the defendants, by which at the same time that they discharged their duty to their principal, they were enabled to derive some other benefit than that belonging to their position as agents. I say, *discharged their duty*, because the lending of the money, on the kind of security taken, was in itself no breach of trust, but was done in conformity with the powers confided to them. In this view of the matter, the insolvency of the mortgagors—the haste with which the money was lent—and the purposes to which it was applied—are immaterial to the question of fraud. Supposing the security had been as valid as it is now alleged to be defective—these circumstances could not have stood in the way of the interests of the plaintiff, and the fact of its having failed can make no difference in the position of the defendants, if, which is not alleged, they did not know it to be inadequate. There is no allegation that the loan was not *bona fide*—or that the transaction with J. Barker was a cloak on the part of T. Barker, to obtain the loan himself, giving James a part of it, in consideration of his furnishing the security as a cover to conceal the true borrower. There is no allegation that there was no debt really due from J. to T. Barker, or that what was paid back to him out of the advance was a design to give it the appearance only of a debt. All that is said is, that James was Thomas's debtor, and that the latter did in fact get paid part or all of his debt from the advance made on behalf of the plaintiff. The readvance of £5000, by which he became second mortgagee on the same security as that on which the £6000 was invested, is charged to have been made *out* of the sum paid by the latter loan; but the advance itself is not denied. It is true in the charges respecting this part of the defendant's conduct, it is alleged that this readvance was either not made at all, or was made to give a fictitious appearance of value to the security, *or* was a debt already due, *or* was made out of the sum advanced by the plaintiff and paid to the defendant Barker; but of these averments, as they are put alternatively, the plaintiff is entitled to adopt whichever is most favourable to him; and if he adopts either of the two last, the advance itself will stand unimpugned. The existence of these facts then being in themselves consistent with *bona fides*, some connection must be shown between them and the fraudulent design attributed to the defendants, before I can put upon them any other than an innocent construction. A design was certainly attributed to the defendants, but on looking attentively through the charges, that design appears to be rather insinuated than alleged, and is as unconnected with the particular facts charged, as the facts themselves are with the attributed design. In the stating part of the bill all that is said, is, "that the plaintiff *suspects* that the advances were made in fraud of him, and to the intent that the whole, or part, should directly or indirectly come back to, or operate for the benefit of the defendants; and that the advances were made under the influence of some motive other than a due and single regard to the interest of plaintiff." As to this, suspicion can go for nothing, even if the matter of suspicion were not stated far too vaguely to be dealt with as an imputation of fraud. The same vagueness and generality pervades the charging part of the bill—in one part it is charged that the respective advances were agreed to with a view to benefit the borrowers, *or* the defendants, *or one of them* directly, *or* indirectly, *rather* than with a true and impartial and single regard to the interests of the plaintiff;" in another, "that the defendants, and particularly the said Thomas Barker, derived, *or* intended, *or* expected, to derive, some direct or indirect benefit or advantage from the loan of £6000, other than the commission upon remittances to the plaintiff;" and, again, the same charge is made against both the defendants, as to the loan of £4000. These charges, it appears to me, are much too general and hypothetical; and, it will be observed, in no way connect the defendants with the specific acts, from which I am asked to draw the inference of fraud. The general charges speak of expectation and intention—but nothing of scheme—plan—concert—or design; and even these expectations and intentions are not linked with the overt acts to which it is contended that they refer. It is possible that those acts may have been the result of a fraudulent design; but it is not averred so. I see what is pointed at—I can conjecture, perhaps, what is intended, but the mark is not hit with sufficient distinctness for me to recognize it. In this respect the case very much resembles the East India Company v. Henchman, 1 Ves. Jun. 287, cited by Mr. Donnelly and Mr. Lowe; in which a somewhat similarly framed bill was dismissed on demurrer.

A very ingenious turn to one part of the bill was given by Mr. Foster, who argued that the defendant Barker having persuaded the plaintiff to employ him instead of Edwards and Hunter, because the latter were in business, it was a fraud in him to accept the agency, because he himself was, from his connexion with his brother, in the same position as Edwards and Hunter. I agree that if any such case as that had been made out—if it had been alleged that Mr. Barker, by representing himself out of business, or as having no pecuniary concerns with his brother, had induced the plaintiff to appoint him his agent, and by means of this false representation got the handling of the plaintiff's money—any dealing with that money would have been a fraud which I am inclined to think Equity would have laid hold of. But in the present case no such representation was made, and no such facts as those assumed appear; it is true that the plaintiff must have supposed Mr. Barker was not in business—but it does not appear that he was. All that is said is, that his brother was largely indebted to him, that he had been in business, that he left his brother and Hallen in charge of the same business, and that they, during his absence, and on his return, were largely indebted to him. All this is consistent with Mr. Barker's having nothing to do with the business of Barker and Hallen, and from Mr. Barker's own letters the contrary is to be inferred. Where then, I ask, is the fraudulent design? It is not enough to say generally that the defendants had bad motives, or sinister or partial views; nor will the case be carried any further by the allegation of particular facts, unless those facts are connected in such a manner with the motives as to show the existence of design. Expectation and hope of benefit from an act done by an agent, which is in itself no breach of trust, followed though it be by fruition, cannot surely amount to fraud. Even in the case of ordinary trusts, a purchase of trust property by trustees is only so far a fraud that the purchaser will not be allowed to derive any profit from his bargain. But there is no such dealing with the principal's monies here; the agents have not lent to themselves, nor made any stipulation *connected with the advance*, by which they are to receive any thing beyond their commission, nor any advantage of which their principal alone ought to have the benefit. Supposing it became the duty of a trustee to purchase instead of to sell would it be in itself a fraud to buy from his *own debtor*, because he might expect and hope to receive payment out of the purchase money? A refined sense of honour, on an over cautious or scrupulous mind, might make a man hesitate in such a transaction, but as the Lord Chancellor said in Fox v. Mackreth, 2 Cox, 321, the question in these matters is "not whether the "transaction be such as a man of honour would "disclaim and disdain, or man of delicacy refuse "to profit by, but it must fall within some "settled definition of wrong settled by this "Court." The question here is whether the defendants have acted *unconscientiously*—whether they have circumvented their principal and betrayed their trust for the purpose of benefitting themselves; not whether they have acted with delicacy, caution, or prudence. Negligence, I have already said, is sufficiently attributed to them,—but looking at their character of agents, and bearing in mind the principles upon which such persons become liable as trustees—the kind of fraud which will render them so, and the manner in which that fraud ought to be averred—I am of opinion that upon this point no sufficient case is disclosed by this bill against these defendants.

I am unwilling to give my decision on this most important part of the case without referring to two cases, not cited at the bar, of Fyler v. Fyler, 3 Beavan, 550, and Rotschild v. Brookman, 5 Bligh, 165. I mention these cases in order that the counsel for the plaintiff may have the benefit of them on appeal, if it be thought they should have led me to a different conclusion. The case in Bligh was that of an agent professing to buy stock for his principal of third persons, but in reality, purchasing of himself, and a loss having subsequently accrued upon it, the agent was decreed to make it good. In Fyler v. Fyler money had been lent by trustees on an unauthorised security, and some of the defendants (not trustees) having gained an advantage by the payment of a debt due to them out of the advance, it was contended that they, as well as the trustees, were liable to make good the loss, on the ground of their knowledge of the money having been lent on a security not authorised by the trust, and the Court held that if the knowledge and design attributed had been made out, these defendants would have been equally liable with the trustees. Neither of these cases, it will be seen, clash with the principles upon which I decide the present one—the first being the case of a direct purchase by the agent from the principal, and the second, a dealing with the property in question, in a manner which in itself constituted a breach of trust. Both cases, however, contain dicta, which deserve attention, though when taken *secundum subjectam materiam*, they furnish, as it appears to me, no argument in favour of the present bill.

I might, perhaps, leave the case here; but there is one point of view in which it was put by Mr. Lowe, that, if tenable, would have rendered the consideration of any other unnecessary. Mr. Lowe contended that the case was shaped in such a way, as to give the defendants the option of meeting the plaintiff on the ground of a case being shown at law, although he might also have disclosed one in equity. Now, certainly, a very clear case is shown, in my opinion, for an action at law, although it is mixed up with suggestions which are more relevant to equity; and although I admit a bill may be framed with a double aspect—yet a bill with a *doubtful* aspect is a very different thing. I think upon this bill a defendant is entitled to say, that as a clear case is stated which is the subject of relief at law—that as the relief prayed is of the nature of damages,—he has a right to confine his answer to this, though mixed up with something else which might, perhaps, standing alone, have been the subject of relief only in equity.

The cases of Vernon v. Vernon, 2 M. and C. 145, and Balls v. Margrave, 3 Beav. 284, are apt illustrations of the rule of construction against a pleader, in regard to inconsistent or uncertain statements. In the first case the plaintiff's bill was so loosely and doubtfully worded as to admit of a twofold inference, and a demurrer by the defendant was therefore allowed upon the ground that he was entitled to put that construction upon the statements in the bill, which was most against the interest of the person making them. In the other case the plaintiff having stated that he was "seised or otherwise entitled" and a legal seisin being necessary to support his claim for discovery, it was held that under the words "otherwise entitled," it was open to the defendant to contend that the plaintiff had an equitable title only, and a demurrer was accordingly allowed upon this ground.

In Edwards v. Edwards, Jacob's Rep. 335, a plaintiff filed a bill stating an alternative case of a title at law or in Equity—and the Lord Chancellor, on appeal, ruled, that a demurrer ought to have been allowed on the ground that the plaintiffs ought to state distinctly whether their case was at law or in Equity. These cases were I believe referred to at the bar, but there is a stronger one upon the point, among the few which escaped counsel's attention. I allude to Williams v. Flight, 5 Beav. 45—which appears to me to be an authority for saying, that if case is so stated on a bill as in one view of it to entitle a party to equitable relief, and in another, to relief at law, that the defendant may meet the plaintiff upon either ground he pleases: and, consequently, if he chooses, tie down the plaintiff to the case capable of being remedied at law. "I agree," says the Master of the Rolls, in the case just cited, "that where there are alternative allegations, and the plaintiff would be entitled to relief if one be admitted, but would not if the other be adopted, then the defendant has a right to take his choice of the allegations." I think the same principle applies to a case with a double aspect (if this can be called so)—that is, if one of those aspects present a case for law, I think the defendant may adopt this and refuse to recognise the other. But, as I before observed, this seems to me a bill rather with a doubtful than a double aspect; and viewing it in that light, a demurrer would hold on the ground of uncertainty and vagueness, as in the cases just mentioned, and that cited by Mr. Donnelly, of Wormald v. De Lisle, 3 Beav. 19. It is unnecessary to consider more particularly the objection to the relief as being in the nature of damages, after the decision I have come to on the other points, but the cases cited by Mr. Fisher, of Clifford v. Burke, 15 Ves. 132, and Glennie v. Inri, 3 Y. and C. 436, appear to me to be authorities in favour of this objection.

Upon the whole then, for the different reasons above given, I think that the demurrer of each defendant must be allowed. In arriving at this conclusion, I trust that no such shock, as seemed to be apprehended by one of the learned counsel for the plaintiff, will be felt by that portion of the English public who are in the habit of sending out pecuniary investments to this colony. But, however this may be, it is not in my power to extend protection to persons in the situation of the plaintiff, upon principles different from those applicable to other suitors, and how the mere fact of distance can place them in a better situation, I confess myself unable to discover. No one, it must be admitted, can fail to sympathise with the misfortunes of the plaintiff as they are stated in this bill, but hard as his case may be, it would be a greater misfortune to the public if a judge were capable of being led away by emotion or expediency to make an unauthorised decision. That the one at which I have now arrived may be erroneous, I have not the presumption to deny; but fallible as may be my own judgment, I trust I shall never be deterred from the due and full exercise of it, by any consideration of the comments it may invite, or the consequences to which it may lead. I have only to add, that this case was very ably argued, and that whatever may have seemed to be my impressions during the argument, I have not come to my present conclusion without the most attentive consideration of all the points taken, and cases cited, on either side. The result is, that the demurrer of each defendant must be allowed, and this bill dismissed with costs.

[His HONOR observed that he had five cases for judgment under consideration, but was only prepared with the one just delivered, and that as to this, he had devoted the whole of the short time which had been set apart as vacation, to the consideration of it, and could not say when he should be prepared with the others—but that all his spare time from the other part of his duties would be given to their preparation.]

ENGLISH EXTRACTS.

THEOLOGICAL WARFARE.—A number of the most distinguished ministers of the non-Episcopalian denominations are carrying on a warfare against Episcopacy. It operates perhaps differently from what the rev. gentlemen intend; for we are credibly informed that a large number of them, who have heretofore been connected with the Presbyterians and Congregationalists, are waiting orders in the Episcopal Church. The Rev. Dr. Cox is now preaching a course of lectures in New York against Episcopacy, and the Rev. Dr. Woods, of Andover, has come out with a work in which he attempts to prove Episcopacy unscriptural. The former has two sons who are Episcopal clergymen, and the latter a son and a son-in-law that are Episcopalians.—*Boston Herald*.

A LORD CHANCELLOR'S LIFE.—The following extract from a letter of Lord Eldon, (published in Mr. Twiss's life of that eminent judge,) shows very forcibly the hardships which attach to the high judicial offices of the law: "After all, Mary, I think I am wonderful, considering how much I have gone through; for mine has been no easy life. I will tell you what once happened to me. I was ill with the gout; it was in my feet, so I was carried into my carriage, and from it I was carried into my court. There I remained all the day, and delivered an arduous judgment. In the evening I was carried straight from my court to the House of Lords; there I sat until two o'clock in the morning, when some of the lords came and whispered to me that I was expected to speak. I told them I really could not, I was so ill, and I could not stand; but they still urged, and at last I hobbled in some way or other, with their assistance, to the place from which I usually addressed the house. It was an important question. I forgot my gout, and spoke for two hours (on the peace of Amiens.) Well, the house broke up, I was carried home, and at six in the morning I prepared to go to bed. My poor left leg had just got in, when I recollected I had important papers to look over, and that I had not had time to examine them; so I pulled my poor left leg out of bed, put on my clothes, and went to my study. I did examine the papers; they related to the Recorder's Court, which had to be heard that day. I was again carried into court, where I had to deliver another arduous judgment, again went to the House of Lords, and it was not till the middle of the second night that I got to bed. These are hard trials to a man's constitution."

A SHARP REBUKE.—A nobleman, of whom it may be truly said that his habits do honour to his station, his heart, to his country, and his country and his kind. His rank is the highest to which an English subject can attain, and his fortune suited to his condition. He has a large family; the eldest his son and heir, being attached to one of the regiments of Horse Guards. Rumours having reached him that the young soldier had fallen into the hands of the Israelites, he sent for him, and spake to the following intent: "M—, I hear you are borrowing money at 20 per cent. I have your brothers' and sisters' fortunes to invest, which I should be glad to put out at a fourth of that interest; you can have the whole at five per cent., and be at no expense in showing the security you propose, as I am satisfied as to your title to the estates on which the loan would be charged." I recommend this style of doing business to all whom it may concern; it is "short, sharp, and decisive," they way in which man's warfare should ever be carried on, whether with the *species* or the *specie*.—*Hyde Marston*.

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